

**PROJECT MANAGEMENT AND  
CONSULTING AGREEMENT**

**BETWEEN**

**CITY PARKWAY V, INC.**

**AND**

**CITY OF LAS VEGAS, NEVADA**

**AND**

**NEWLAND COMMUNITIES, LLC**

## TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS .....1
ARTICLE II	APPOINTMENT OF PROJECT MANAGER AND TERM OF AGREEMENT.....10
Section 2.1	Appointment of Project Manager .....10
Section 2.2	Term of Agreement .....10
ARTICLE III	SCOPE OF PROJECT MANAGER’S SERVICES .....11
Section 3.1	Annual Business Plan .....11
(a)	Approval Process .....11
(b)	Compliance .....11
(c)	Contents .....12
Section 3.2	Master Plan .....12
(a)	Purpose .....12
(b)	Revisions .....12
(c)	Updates .....13
(d)	Future Modification by Project Manager .....13
(e)	Future Modification by Owner .....13
(f)	Design Guidelines and CC&Rs .....13
(g)	Subdivision Map.....13
Section 3.3	Implementation of Master Plan. ....14
(a)	Appointment .....14
(b)	Licenses and Permits .....14
(c)	Implementation.....14
(d)	Public Use.....14
(e)	Compliance With Requirements.....14
Section 3.4	Marketing of Project.....15
(a)	Marketing Plan .....15
(b)	Negotiations with Developers .....15
Section 3.5	Scope of Project Manager’s Authority .....15
(a)	Limitation .....15
(b)	Emergency .....15
Section 3.6	Project Representatives.....16
(a)	Project Manager’s Representative .....16
(b)	Owner’s Project Representative .....16

# TABLE OF CONTENTS

(continued)

	<b>Page</b>
(c) Meetings and Reports .....	16
(d) Inspections .....	16
Section 3.7 Covenants of City Parties .....	17
(a) Cooperation .....	17
(b) Confidential Information .....	17
Section 3.8 Coordination of Infrastructure Improvements .....	18
(a) Financing .....	18
(b) Timing and Condition .....	18
(c) Source of Funding .....	18
Section 3.9 Design and Construction of the Infrastructure Improvements .....	18
(a) Approval of Drawings and Budget .....	18
(b) Commencement of Construction .....	19
(c) Payment for Contractual Services .....	19
(d) Procedures .....	19
(e) Approval of Specifications and Bids .....	20
(f) Approval of Contracts .....	20
(g) Performance Bonds .....	20
(h) Change Orders .....	20
(i) Enforcement .....	21
Section 3.10 Access and Review of Project Manager's Books and Records .....	21
Section 3.11 Project Manager's Access to Project Site .....	21
(a) Tests and Consultants .....	21
(b) Costs and Liability .....	22
ARTICLE IV PLANNING OF BUILDING DEVELOPMENTS; PUBLIC USES; PUBLIC PARKING; CONDITION OF PROJECT SITE .....	22
Section 4.1 Planning and Oversight of Building Developments .....	22
Section 4.2 Design Review Committee .....	23
Section 4.3 Building Development Approval .....	23
(a) Block Plans .....	23
(b) Plans and Drawings .....	24
Section 4.4 Purposes and Requirements of Design Review Committee .....	24
(a) Purposes .....	24
(b) Requirements .....	25

# TABLE OF CONTENTS

(continued)

	Page
Section 4.5      Approved Building Developments .....	25
Section 4.6      Public Uses .....	25
(a)      Scope of Use .....	25
(b)      Reservation of Acreage .....	25
(c)      Academic Medical Center .....	26
(d)      No Liability.....	26
Section 4.7      Sports Stadium.....	26
(a)      Cooperation .....	26
(b)      Price .....	27
(c)      Reservation of Site.....	27
Section 4.8      Public Parking.....	27
(a)      Cooperation .....	27
(b)      Non-Business Hours .....	27
Section 4.9      Presence of Hazardous Materials .....	27
Section 4.10      Project Name .....	27
Section 4.11      Representations.....	28
(a)      Brokers.....	28
(b)      Legal Authority.....	28
ARTICLE V      EXCLUSIVE RIGHTS AND COMPENSATION.....	28
Section 5.1      Reserved Block Option Right.....	28
(a)      Term.....	28
(b)      Exercise of Right .....	28
Section 5.2      Contract Period .....	29
(a)      Negotiation .....	29
(b)      Reserved Block Refusal Right.....	29
Section 5.3      Determination of Purchase Price .....	30
(a)      Response to Proposed Price.....	30
(b)      Appraisal.....	30
(c)      Council's Consideration .....	30
(d)      Dispute Resolution .....	31
Section 5.4      Option Memorandum .....	31

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 5.5      Sales Management Fees.....	31
Section 5.6      Reimbursement of Project Costs .....	31
(a)      Definition of Project Costs .....	31
(b)      Financial Obligation .....	32
(c)      Third Party Invoices .....	32
(d)      Reimbursement to Project Manager .....	32
(e)      Full Reimbursement .....	33
Section 5.7      Private Association .....	33
ARTICLE VI      EXTENSION OF TERM.....	34
Section 6.1      Performance Standards .....	34
Section 6.2      Determination of Extension.....	34
Section 6.3      Mutual Agreement.....	34
ARTICLE VII      DEFAULT AND TERMINATION.....	35
Section 7.1      Default by Project Manager.....	35
Section 7.2      Owner's Remedies.....	36
(a)      Election.....	36
(b)      Notice of Termination .....	36
(c)      Actual Damages.....	36
(d)      No Waiver.....	36
Section 7.3      Cessation of Employment.....	37
Section 7.4      Default by City Party .....	37
Section 7.5      Project Manager's Remedies .....	38
(a)      Election.....	38
(b)      Notice of Termination .....	38
(c)      Project Manager's Actual Damages .....	38
(d)      No Waiver.....	38
Section 7.6      Exculpation.....	39
(a)      Indemnification.....	39
(b)      Insurance Coverage .....	39
(c)      Defense .....	39
(d)      Right of Setoff.....	39

# TABLE OF CONTENTS

(continued)

	Page
(e) Exculpatory Clause and Waiver .....	40
(f) Non-Discrimination in Employment .....	40
(g) Survival.....	40
Section 7.7       Rights and Obligations on Expiration or Other Termination of Agreement .....	40
ARTICLE VIII   TRANSFER; INSURANCE; CERTIFICATES BY OWNER AND DEVELOPER.....	41
Section 8.1       Transfer and Assignment.....	41
(a)   Transfer by Project Manager .....	41
(b)   Transfer by City Party .....	41
Section 8.2       Project Manager's Insurance .....	42
Section 8.3       Estoppel Certificates.....	42
(a)   Project Manager's Certificate.....	42
(b)   City Party's Certificate .....	42
ARTICLE IX     CITY PARTIES' RIGHT TO PERFORM DEVELOPER'S COVENANTS AND OBLIGATIONS .....	43
Section 9.1       Right to Perform Project Manager's Obligations .....	43
Section 9.2       Waiver, Release and Assumption of Obligations.....	43
ARTICLE X     NOTICES, CONSENTS AND APPROVALS; INVESTIGATIONS .....	43
Section 10.1       Service of Notices and Other Communications .....	43
Section 10.2       Consents and Approvals .....	44
(a)   Writing.....	44
(b)   Standard.....	44
(c)   Failure to Respond.....	44
Section 10.3       Investigations and Inquiries.....	45
ARTICLE XI    GENERAL PROVISIONS.....	45
Section 11.1       Governing Law and Venue.....	45
Section 11.2       References .....	45
Section 11.3       Entire Agreement.....	46
(a)   Integration.....	46

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(b) Modification .....	46
(c) Recitals and Exhibits .....	46
Section 11.4 Invalidation of Certain Provisions.....	46
Section 11.5 Remedies Cumulative.....	46
Section 11.6 Successors and Assigns .....	46
Section 11.7 Nonliability of Officials and Employees .....	47
Section 11.8 Conflict of Interest.....	47
Section 11.9 No Partnership .....	47
Section 11.10 Time Periods.....	47
Section 11.11 No Third Party Beneficiaries .....	48
Section 11.12 Dispute Resolution .....	48
(a) Prohibitory Injunctive Relief.....	48
(b) Reference to Arbitration .....	48
(c) Appointment of Arbitrators .....	48
(d) Decision .....	48
(e) Enforcement.....	49
Section 11.13 Waiver of Jury Trial .....	49
Section 11.14 City's Authority.....	49
Section 11.15 Independent Contractor .....	49
Section 11.16 Attorneys' Fees.....	49

## ***EXHIBITS***

***Exhibit "A" – Legal Description of Project Site***

***Exhibit "B" – Infrastructure Bidding Requirements and Infrastructure Improvement Design and Construction Contractor Required Contract Provisions***

***Exhibit "C" – Master Plan***

***Exhibit "D" – Phase I Plan***

***Exhibit "E" – Designation of Reserved Blocks***

***Exhibit "F" – Option Memorandum***



## **PROJECT MANAGEMENT AND CONSULTING AGREEMENT**

THIS PROJECT MANAGEMENT AND CONSULTING AGREEMENT ("Agreement") is made and entered into as of December 27<sup>th</sup>, 2005, by and between CITY PARKWAY V, INC., a Nevada corporation ("Owner"), the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada ("City"), and NEWLAND COMMUNITIES, LLC, a Delaware limited liability company ("Project Manager") with respect to the following:

### **RECITALS**

A. Owner is the owner of that certain parcel of unimproved land in Las Vegas, Nevada as more specifically described on Exhibit "A" attached hereto (the "Project Site").

B. Owner desires to have developed upon the Project Site a first-class, mixed-use, master-planned development project constructed pursuant to the Master Plan (the "Project"). It is anticipated that the Project will be a market leader in the greater Las Vegas area, will create employment opportunities and economic benefit for the region and will create a stimulus for development in downtown Las Vegas, Nevada.

C. For many years Project Manager has been engaged in the development and marketing of master planned communities and is well experienced therein. Owner desires to engage the services of Project Manager to provide management and oversight of the implementation of the Master Plan, the design and construction of Infrastructure Improvements and the planning, design and marketing of the Project and the marketing of specific Building Developments to third parties, all pursuant to the terms and conditions set forth in this Agreement.

D. In exchange for its services, Project Manager will receive reimbursement of its actual expenses and overhead costs, will be granted a right of first refusal to acquire certain portions of the Project Site and will be paid a marketing fee in connection with the sale of certain portions of the Project Site to third parties, all pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in mutual consideration of the mutual agreements contained herein, the Parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

When used in this Agreement, the following terms shall have the respective meanings:

"Academic Medical Center" means that portion of the Medical Center consisting of approximately eight (8) acres planned for an academic medical center.

"Affiliate" or "Affiliates" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under

common control with, such Person. For purposes hereof, the term “control” (including the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of a Controlling Interest. Unless the context otherwise requires, any reference to “Affiliate” in this Agreement shall be deemed to refer to an Affiliate of Project Manager.

“Agency” means the Redevelopment Agency of the City of Las Vegas, Nevada.

“Agreement” shall mean this Project Management and Consulting Agreement as the same may be amended or modified from time to time in accordance with the terms hereof.

“Alzheimer Clinic” means the Alzheimer research and treatment clinic planned by KMF consisting of approximately 60,000 square feet on approximately two (2) acres to be located within the Academic Medical Center.

“Annual Business Plan” shall have the meaning specified in Section 3.1(a).

“Approved Building Development” means a Building Development for which all required governmental regulatory permits, approvals or other consents (including any required under this Agreement) necessary to permit the construction of such Building Development have been obtained, including any applicable building permits.

“Architect(s)” means such architects or engineers or other design professionals having responsibility for the overall design and construction oversight of construction of Infrastructure Improvements or portions thereof.

“Automatic Extension” shall have the meaning specified in Section 6.1 below.

“Bidding Requirements” means those construction bidding procedures and requirements for the design and construction of Infrastructure Improvements set forth on Exhibit “B” attached hereto.

“Block(s)” means those blocks of the Project as set forth on the Master Plan and lettered A through M.

“Block Plans” shall have the meaning set forth in Section 4.3(a) below.

“Building Development” means a vertical building development project to be constructed on the Project Site in accordance with the Master Plan, including office buildings, residential buildings, retail buildings, hotels and any other type of building, but excluding buildings for Public Uses.

“Building Development Program” means a conceptual plan and schedule for the construction of Building Developments over the next five years.

“Business Day” or “business day” means a day other than Saturday, Sunday or a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed.

“CC&Rs” means covenants, conditions and restrictions to be recorded against the Project Site governing the use, operation and maintenance of certain areas of common benefit within the Project Site.

“Change Order Parameters” means any change order in connection with Infrastructure Improvements which:

- (i) would result in any increase or decrease in the contract amount for any Improvement Design and Construction contracts of more than \$500,000;
- (ii) would result in a cumulative increase or decrease in any current Infrastructure Budget of \$1,000,000;
- (iii) based on the then latest Infrastructure Budget, would result in a total cost to complete all Infrastructure Improvements in an amount in excess of the Net Proceeds; and
- (iv) would result in an extension of the date for Substantial Completion of the Infrastructure Improvements set forth in the applicable infrastructure development schedule by more than 30 days or when added to any other prior extensions would result in a cumulative extension of 60 days of the original completion date set forth in the infrastructure development schedule.

“City” means the City of Las Vegas, Nevada, a political subdivision of the State of Nevada.

“City Hall” means the construction on Phase I of the City Hall building for the government of the City which will house the offices of the Mayor of the City and members of the Council and consist of approximately 600,000 square feet in the approximate location as set forth in the Master Plan.

“City Indemnified Party or Parties” means, collectively, Owner, City and their respective elected and appointed officials (including the Mayor of the City and the members of the Council), directors, officers, shareholders, members, employees, permitted successors and assigns and agents of such Persons (and the respective heirs, legal representatives, successors and assigns of any of the foregoing).

“City Party(ies)” shall mean Owner and/or City, as the context may require.

“Completion Approvals” means the situation in which the Governmental Authority that has authority for any element of Infrastructure Improvements has approved the construction of such element as being complete in accordance with all applicable Requirements and with any element that is required to be owned or maintained by a Governmental Authority, and such Governmental Authority has accepted maintenance and released any bonds related thereto.

“Confidential Information” means any information marked “CONFIDENTIAL” or “PROPRIETARY” submitted as part of any Annual Business Plan and any other information,

documentation, data, reports, studies, analyses or other materials or communications so designated by Project Manager.

“Construction Consultant” means any Party engaged by a City Party to perform certain functions of the City Party under this Agreement or to provide services to a City Party in connection with this Agreement.

“Contract Period” shall have the meaning set forth in Section 5.2(a) below.

“Controlling Interest” means the ownership, directly or indirectly, of, or other legal right to direct the voting of, 50% or more of the voting interests in a Person or the governing body of such Person.

“Council” shall mean the City Council of the City of Las Vegas, Nevada.

“County” means Clark County, Nevada, a political subdivision of the State of Nevada.

“Design Review Committee” shall have the meaning set forth in Section 4.2 below.

“Effective Date” means the day on which the City Council adopts the ordinance approving this Agreement and authorizing its execution by the City Parties.

“Extension Notice” shall have the meaning set forth in Section 6.2 below.

“Governmental Authority or Authorities” means (i) the United States of America, the State of Nevada, the City, the County, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Project Manager or over or under the Project Site or Project (or any portion thereof) or over the Infrastructure Improvements (or any portion thereof) or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project Site or the Project, or any vault in or under the Project Site, or airspace over the Project Site and (ii) any public utility or private entity which will be accepting and/or approving design and/or construction of any element of Infrastructure Improvements.

“Hazardous Materials” shall mean (a) petroleum and its constituents; (b) radon gas, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyl in excess of Federal, state or local safety guidelines, whichever are more stringent; (c) each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance, whether solid, liquid or gaseous, which is or may during the Term of this Agreement be defined as or included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “pollutants or contaminants,” “solid wastes” or words of similar import pursuant to any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, including, without limitation, each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*; (iv) the Toxic Substances Control Act (15 U.S.C. §2061 *et seq.*); (v) the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*); (vi) the Clean Air Act (42 U.S.C. §7401 *et seq.*); (vii) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f *et seq.*); (viii) the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; (ix) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (x) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (xi) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. §1101 *et seq.*); and (xii) NRS Chapters 444, 445A, 445B, 445C, 459 and 590, and NRS §§ 40.504, 618.750 through 618.850, inclusive, and 477.045; and (d) any other chemical, material, gas or substance, the exposure to or release of which affects the health or safety of persons or is regulated by any Requirement of any Governmental Authority having jurisdiction over the Project Site or the operations thereon.

“Improvements Design and Construction Contract” means a contract between City and any Infrastructure Improvements Design and Construction Contractor with respect to the design and/or construction of any Infrastructure Improvements.

“Infrastructure Bonds” means bonds issued by the City, the proceeds of which are to be used to acquire, construct and equip any of the Infrastructure Improvements.

“Infrastructure Bonds Costs” means the costs, fees and expenses incurred in connection with the issuance of any Infrastructure Bonds, including but not limited to, (i) rating agency and other financing fees, (ii) the fees and disbursements of bond counsel, (iii) any underwriter’s discount, (iv) the fees and disbursements of any financial advisors, (v) all costs of preparing and printing the Bonds, the preliminary official statement, the final official statement and all other documentation supporting issuance of the Bonds, and (vi) any other costs of a similar nature incurred in connection with issuance of Infrastructure Bonds.

“Infrastructure Construction Costs” means with respect to Infrastructure Improvements, the following costs and expenses as applicable: soft costs incurred during or in connection with construction, such as planning, architectural, engineering, surveying, consultant, development, legal, design, accounting and all other professional fees and costs; expenses in connection with staging, purchasing and storing materials and equipment on the Project Site; general overhead; hard costs incurred in preparation of, during or in connection with construction (including, without limitation, fees and expenses of contractors, suppliers, materialmen and laborers, and for materials, supplies, equipment and equipment rental and storage); governmental fees and charges (including, without limitation, permit and impact fees) during or in connection with construction; real estate and other taxes incurred during construction; and insurance costs incurred during construction. For this purpose, “during construction” shall mean the period commencing with the construction of any applicable Infrastructure Improvements through final completion of construction thereof.

“Infrastructure Improvements” means all or a part of the Project-wide infrastructure improvements (including, but not limited to, roads, streets, curbs and gutters, drainage facilities, detention basins, sewage treatment facilities, sewer mains and lines, water treatment facilities,

water storage facilities, water mains and lines, electrical facilities and lines, gas facilities and lines, cable facilities and lines, and all other “wet” and “dry” utilities) serving the Project Site.

“Infrastructure Improvements Design and Construction Contractor” means any architect, engineer, construction contractor (excluding sub-contractors), project manager, program manager and any other design and construction consultant retained in connection with the design and construction of the Infrastructure Improvements.

“Infrastructure Project” means the planning, design and construction of any Infrastructure Improvements.

“KMF” means Keep Memories Alive Foundation, a Nevada not-for-profit corporation.

“Late Charge Rate” means three percent (3%) over the prime rate published from time to time by the Wall Street Journal, or, if the Wall Street Journal is no longer published, then its successor publication or a similar financial publication that publishes the prime rate of interest.

“LVPAC” means the Las Vegas Performing Arts Foundation, a Nevada not-for-profit corporation.

“Marketing Plan” means goals and objectives with detailed budgets demonstrating how the entire Project and each Phase (or Blocks within each Phase) will be marketed to prospective developers, purchasers and tenants.

“Master Design Guidelines” means the design guidelines to govern and control building on the Project Site.

“Master Plan” means the list of plans, documents and materials that constitute the current proposed version of the master plan for the Project, as shown in Exhibit “C” attached hereto, as such master plan may be amended and revised from time to time in accordance with this Agreement.

“Medical Center” shall mean the proposed development of a medical use based development on the Project on that approximate area designated in the Master Plan consisting of approximately 12 acres on which various medical uses may be developed, including private for-profit facilities, not-for-profit facilities and the Academic Medical Center.

“Net Proceeds” means the original proceeds of any Infrastructure Bonds less any amounts to pay capitalized interest and less Infrastructure Bonds Costs.

“Objection Notice” shall have the meaning set forth in Section 6.2 below.

“Option Memorandum” shall have the meaning set forth in Section 5.4 below.

“Option Notice” shall have the meaning set forth in Section 5.2(a) below.

“Option Rights” shall have the meaning set forth in Section 5.2(a) below.

"Owner" shall have the meaning set forth in the initial paragraph of this Agreement.

"Owner's Project Representative" shall have the meaning set forth in Section 3.6(b) below.

"Party(ies)" means Project Manager, Owner and/or City.

"PAC" shall mean a performing arts center to be generally located in the Project as set forth on the Master Plan, provided, however, such site shall not exceed 4.3 acres.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

"Phase" and "Phases" shall mean Phase I and any subsequent phases of development of the Project.

"Phase I" shall mean that portion of the Project served by the Phase I Infrastructure Improvements, as shown on Exhibit "D" attached hereto.

"Phase I Infrastructure Bonds" means Infrastructure Bonds issued by the City, the Net Proceeds of which are to be used acquire, construct and equip any of the Phase I Infrastructure Improvements.

"Phase I Infrastructure Improvements" means those Infrastructure Improvements to be constructed in connection with Phase I and intended to serve Phase I, as shown on Exhibit "D" attached hereto.

"Planning Commission" means the Planning Commission of the City of Las Vegas, Nevada.

"Plans and Drawings" shall have the meaning set forth in Section 4.3(b) below.

"Plans and Specifications" shall have the meaning set forth in Section 3.9(d)(ii) below.

"Private Association" shall have the meaning set forth in Section 5.7 below.

"Private Use" means any Building Development on the Project that is not a Public Use and which is not exempt from paying Real Estate Taxes.

"Project" shall have the meaning specified in Recital B.

"Project Documentation" means all plans and specifications, studies, test results, design materials, land plans, building plans, building elevations, construction drawings, schematics, marketing materials, and all other materials and documentation relating in any way to the Project in Project Manager's possession or control, including, without limitation, for Infrastructure Improvements or for Building Developments.

“Project Information” means those studies, reports and information pertaining to the Project delivered to Project Manager by a City Party, including, without limitation, those listed on Exhibit “H” attached hereto.

“Project Manager” shall be the Person identified in the initial paragraph of this Agreement or, if applicable, such Person’s permitted assignee. The use of the term “Project Manager” is for convenience only and shall not undermine any development or option rights granted to Project Manager in this Agreement.

“Project Manager DDA” means the Disposition and Development Agreement to be negotiated and executed by Owner and Project Manager whereby (i) Owner shall sell, and Project Manager or its permitted assignee shall purchase, the Reserved Blocks and (ii) the purchaser of the Reserved Blocks will construct Building Developments on the Reserved Blocks.

“Project Manager Default” shall have the meaning set forth in Section 7.1 below.

“Project Manager Default Notice” shall have the meaning set forth in Section 7.1(a) below.

“Project Manager’s Representative” shall have the meaning set forth in Section 3.6(a) below.

“Project Representatives” refers collectively to Project Manager’s Representative and Owner’s Project Representative.

“Project Site” shall have the meaning specified in Recital A and shall be described in Exhibit “A” attached hereto.

“Public Parking” means either structured automobile parking garages or surface parking lots available primarily for parking by the general public, which serve the Project Site.

“Public Uses” means the PAC, City Hall, the Alzheimer Clinic and the Medical Center and any other uses within any Phase which are dedicated to uses such that Real Estate Taxes are not payable for the land on which such uses are located.

“Real Estate Taxes” means the ad valorem real estate taxes paid in connection with a Building Development and shall not include any other taxes or assessments against the Project.

“Registered Client” shall have the meaning set forth in Section 5.5 below.

“Required Contract Provisions” shall mean those contractual provisions that must be contained in Improvement Design and Construction Contracts as set forth on Exhibit “B” attached hereto.

“Requirement” means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Project Manager or the Project, or any street, road, avenue or sidewalk comprising a part of, or lying in front of,



the Project, or any vault in or under the Project Site (including, without limitation, the Americans with Disabilities Act and any of the foregoing relating to handicapped access or parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) any temporary or final certificates of completion and/or occupancy issued for the Project or the Infrastructure Improvements, as then in force; (iii) any and all provisions and requirements of any insurance policy required to be carried by Project Manager under this Agreement; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations, or other indentures, documents or instruments of record.

“Reserved Blocks” means Blocks D, E, H and G of the Project, as identified in the Master Plan, and such retail development as may be commercially reasonable and appropriate in Project Manager’s discretion within the existing City Hall Square, as depicted in Exhibit “E” attached hereto.

“Reserved Block Option Right” shall have the meaning set forth in Section 5.1(a) below.

“Reserved Block Refusal Right” shall have the meaning set forth in Section 5.2(b) below.

“Sales Management Fee” shall have the meaning set forth in Section 5.5 below.

“Stadium” means the proposed stadium as shown on the Master Plan intended to be the home field, court or ice rink for a major league franchise such as Major League Baseball, the National Football League, the National Basketball Association or the National Hockey League.

“Subdivision Map” shall have the meaning set forth in Section 3.2(g) below.

“Substantial Completion” or “Substantially Completing” means (i) the completion of all Infrastructure Improvements constructed in substantial accordance with the applicable Plans and Specifications and all applicable Requirements, as evidenced by the issuance of all applicable Completion Approvals, together with a certification by the applicable Architects that such Infrastructure Improvements have been substantially completed in accordance with such Plans and Specifications and all applicable Requirements; and (ii) delivery to City of evidence reasonably satisfactory to City that such Infrastructure Improvements have been substantially completed on a lien-free basis, except for any such liens being contested in accordance with the provisions of this Agreement.

“System” means the California Public Employees’ Retirement System.

“Term” shall have the meaning set forth in Section 2.2 below.

“Third Party DDA” means the form of Disposition and Development Agreement to be agreed upon between Owner and Project Manager whereby (i) Owner shall sell, and a Person shall purchase, sites for the development of Building Developments (except for the Reserved Blocks, if Project Manager consummates the acquisition of the Reserved Blocks) and (ii) the purchaser of the site will construct such Building Developments.

“Transfer” means the assignment, conveyance or any other transfer whatsoever of any interest in this Agreement.

“Unavoidable Delays” means any prevention, delay or stoppage due to any of the following (provided that such prevention, delay or stoppage is beyond the claiming Party’s reasonable control): strikes, lockouts, labor disputes, slowdowns, acts of God, inability to obtain labor or materials at a commercially reasonable cost, war, enemy action, acts of terrorism, civil commotion, fire, casualty, abnormal weather conditions, unknown subsurface conditions (including without limitation the presence of Hazardous Materials, artifacts, archeological and other historical resources, and unanticipated adverse soil conditions), any delays associated with the remediation of Hazardous Materials on or under the Project Site, unreasonable or abnormal delays in the processing or approval of any permits or approvals by any Governmental Authority, a moratorium or any regulatory policy which impedes or precludes private development on the Project Site, a court order which causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party) or other such cause beyond such Party’s reasonable control other than the application of a Requirement. Such Party shall use reasonable good faith efforts to notify the other Party not later than twenty (20) days after such Party knows of the occurrence of an Unavoidable Delay. In no event shall any of the following constitute an Unavoidable Delay with respect to such Party: (i) a Party’s financial condition or inability to fund or obtain funding or financing, or (ii) any delay arising from a Party’s (or its Affiliate’s) default under any Project Documentation.

## **ARTICLE II**

### **APPOINTMENT OF PROJECT MANAGER AND TERM OF AGREEMENT**

#### **Section 2.1    Appointment of Project Manager.**

Owner hereby appoints Project Manager, on an exclusive basis as set forth herein, to conduct and supervise all aspects of management and marketing, and certain aspects of development, of the Project in accordance with the terms and conditions of this Agreement. Project Manager hereby accepts such appointment on the terms and conditions of this Agreement.

#### **Section 2.2    Term of Agreement.**

This Agreement shall have a term that commences as of the Effective Date and shall continue for a period of five (5) years (the “Term”), subject to the provisions of Article VI below for extension and subject further to the provisions of Article VII below for earlier termination.

## ARTICLE III

### SCOPE OF PROJECT MANAGER'S SERVICES

#### Section 3.1 Annual Business Plan.

(a) Approval Process. Within 120 calendar days after the Effective Date of this Agreement, and at least 45 calendar days before the end of each calendar year thereafter, Project Manager shall submit to Owner a proposed annual business plan which contains, at a minimum, the content described in paragraph (c) below (each an "Annual Business Plan"). Project Manager acknowledges that each Annual Business Plan may, at the option of the City Parties, be presented for approval by the Council pursuant to the required procedures for presentation of matters to the Council. Upon evaluating the proposed Annual Business Plan in its reasonable discretion, Owner shall deliver to Project Manager, as soon as practicable but in no event later than 60 calendar days after receipt of the proposed Annual Business Plan, a written response which either approves the proposed Annual Business Plan in its entirety or disapproves certain provisions or budget line items in the proposed Annual Business Plan with an explanation of the reason for disapproval. Any provisions or budget line items which are either affirmatively approved or not expressly disapproved during the 60-day period shall be deemed approved and shall become part of the final Annual Business Plan. If any provisions or budget line items are expressly disapproved during the 60-day period, the parties shall immediately negotiate in good faith to resolve the disapproved items within 15 days after Project Manager's receipt of Owner's written response. If any disapproved items remain unresolved at the end of such 15-day period, any Party may elect to use the dispute resolution procedures set forth in Section 11.12 below. To the extent feasible, while negotiations are ongoing or dispute resolution is pending, Project Manager shall continue to coordinate the development and/or operation of the Project or applicable Phases pursuant to the last approved Annual Business Plan (or the approved items in the proposed Annual Business Plan) subject to the terms and conditions of this Agreement. Once the Annual Business Plan has been approved by Owner, Project Manager may amend or supplement the Annual Business Plan during the course of the applicable calendar year only upon the written approval of Owner. Project Manager shall not make any commitment or contract which does not conform to the applicable Annual Business Plan, as it may be amended from time to time.

(b) Compliance. Project Manager shall use commercially reasonable efforts to provide its services under this Agreement and develop and/or operate the Project in a manner which substantially conforms with the applicable Annual Business Plan. In no event shall Project Manager contract for any work, make any expenditure or incur any liability in connection with the Project which causes the total actual costs for any budget line item in the Annual Business Plan to exceed the amount allocated to such budget line item, except to the extent such additional cost has previously been approved in writing by Owner or except as necessary in emergency situations to protect the health, safety and welfare of people or property (in which event Project Manager shall notify Owner immediately). Within ten (10) Business Days after Project Manager's Representative has determined that the projected cost to complete any budget line item in the Annual Business Plan will exceed by more than five percent (5%) the amounts allocated to such budget line item, Project Manager shall furnish to Owner proposed revised budgets with explanations of variances for Owner's approval.

(c) Contents. Each Annual Business Plan shall include, at a minimum, the following items and schedules for the following calendar year:

- (i) the goals and objectives for Project Manager during the next calendar year with respect to existing Phases and the development of any new Phase proposed to be undertaken;
- (ii) a detailed report of all expenditures made by Project Manager in the prior twelve (12) months in connection with its activities, including, without limitation, all amounts expended in marketing the Project or Building Developments, design and planning of Infrastructure Improvements, and all overhead of Project Manager allocated to the Project;
- (iii) a detailed budget in form acceptable to Owner setting forth the projected expenditures of Project Manager for the next calendar year in connection with the performance of its activities hereunder, including, without limitation, all amounts expended in marketing the Project or Building Developments, design and planning of Infrastructure Improvements, and all overhead of Project Manager allocated to the Project;
- (iv) a plan and a schedule describing the construction of Infrastructure Improvements in the then current Phase or Phases for which construction is anticipated to be commenced in the applicable plan year;
- (v) a detailed budget in form acceptable to Owner setting forth the projected expenditures on Infrastructure Improvements, including the Infrastructure Bonds Costs and the Infrastructure Construction Costs;
- (vi) the Marketing Plan for the Project and any planned Building Developments;
- (vii) a revised Master Plan reflecting the then current status of the Project and the Phases then under development; and
- (viii) the current Building Development Program as to each Phase then being developed.

### Section 3.2 Master Plan.

(a) Purpose. The purpose of the Master Plan is to set forth a plan for development of the Project in Phases and to describe appropriate Infrastructure Improvements for transportation, utilities, pedestrian access and circulation and other support services, the types of Building Developments (including retail, office, medical, cultural, sports, hotel, and residential) planned for development thereon and the densities and proposed locations thereof.

(b) Revisions. Upon execution of this Agreement, Project Manager shall coordinate revisions to the Master Plan in a manner that embodies a comprehensive scheme for development of a first-class, mixed-use, master-planned community on the Project Site and

reflects current market conditions. Project Manager shall endeavor in good faith to propose a revised version of the Master Plan to Owner within 120 days after the Effective Date of this Agreement. Project Manager and Owner shall negotiate in good faith to resolve promptly any points of disagreement with respect to Project Manager's proposed revisions to the Master Plan. Project Manager acknowledges that the revised version of the Master Plan will be presented for approval by the Council pursuant to the required procedures for presentation of matters to the Council.

(c) Updates. Owner and Project Manager acknowledge that the Project is to be developed pursuant to the Master Plan and that, as of the date hereof, the Master Plan is based on a number of assumptions, including, without limitation, the development and construction of each of the Medical Center, the Stadium, the Alzheimer's Clinic, City Hall and the PAC. In that regard, Project Manager shall update the Master Plan in conjunction with each Annual Business Plan to reflect any changes in the assumptions underlying the Master Plan or any other changed circumstances.

(d) Future Modification by Project Manager. If, in Project Manager's good faith judgment, a future modification to the Master Plan is in the best interest of Owner, Project Manager shall submit the recommended modifications to Owner in writing along with all information necessary for Owner to make an informed decision. Such information shall include, without limitation, the reasons for each modification, Project Manager's good faith estimate of the cost impact of each modification and such other information as may be reasonably requested by Owner in writing. Project Manager acknowledges that any such proposed changes to the Master Plan or approvals required under this paragraph may require formal submission to the Council for its approval.

(e) Future Modification by Owner. If Owner determines in its sole discretion that a future modification to the Master Plan is in the best interest of Owner, Owner shall submit the recommended modifications to Project Manager in writing accompanied by a statement as to Owner's reasons for requesting a modification and all information reasonably necessary for Project Manager to evaluate such changes. All modifications shall be subject to Project Manager's prior written approval, which shall not be unreasonably withheld, delayed or conditioned. It shall be deemed reasonable for Project Manager to disapprove any recommended modification to the Master Plan which may have an adverse impact on any development or option rights granted to Project Manager under this Agreement or the Project Manager DDA.

(f) Design Guidelines and CC&Rs. Project Manager shall cause the preparation of, and submit to Owner, the Master Design Guidelines and the CC&Rs for Owner's review and approval, which shall not be unreasonably withheld, delayed or conditioned to the extent the Master Design Guidelines and the CC&Rs are consistent with the Master Plan and the purposes of this Agreement. Project Manager shall submit draft Master Design Guidelines and draft CC&Rs to Owner no later than 120 days after the Effective Date.

(g) Subdivision Map. Project Manager shall cause the preparation of, and shall process for approval, a subdivision map or maps in phases, as appropriate (each a "Subdivision Map") in order that parcels of the Project Site may be conveyed or dedicated in compliance with the Master Plan and with all applicable requirements.

### Section 3.3 Implementation of Master Plan.

(a) Appointment. Owner hereby appoints Project Manager exclusively to coordinate all aspects of the Project (except for development of Public Uses and construction of any Building Development on a Block which has been purchased by a third party) generally in accordance with the Master Plan. Project Manager hereby accepts such appointment on the terms and conditions hereinafter set forth. Project Manager shall (i) employ qualified individuals to fill those positions and perform those duties as set forth in the then applicable Annual Business Plan and (ii) select and engage, on behalf of Owner, those third-party consultants as set forth in the then applicable Annual Business Plan. Nothing in this Agreement shall be construed or implied as creating any general contractor duties or obligations on the part of the Project Manager, and the City Parties acknowledge and agree that Project Manager shall not be required to acquire or maintain a contractor's license in the State of Nevada in connection with Project Manager's fulfillment of its duties under this Agreement.

(b) Licenses and Permits. Project Manager shall cause the application for, and use its commercially reasonable efforts to obtain, the issuance of all approvals, permits and licenses required by any and all applicable Requirements for it to perform its duties hereunder and to receive any of the compensation payable to Project Manager, including, without limitation, licenses required under Chapter 645 of the Nevada Revised Statutes in connection with real estate brokerage and property management, if any. Project Manager hereby agrees to use commercially reasonable efforts to keep all such required approvals, permits and licenses in full force and effect at all times necessary during the Term. To the extent necessary or desirable, Owner agrees to cooperate to the fullest extent with Project Manager in applying for, obtaining or maintaining such licenses and permits.

(c) Implementation. Project Manager agrees that it shall use its commercially reasonable efforts and employ such resources and personnel as are reasonably necessary, proper or advisable to implement the Master Plan. During the Term, Project Manager agrees to coordinate with commercially reasonable diligence the implementation of the Master Plan in all material respects, subject to Unavoidable Delays.

(d) Public Use. Project Manager shall assist the City Parties in connection with the Public Uses in the negotiation of any agreements, review of any design issues relating to the Master Plan or Infrastructure Improvements or overall parking issues, and coordination of any construction activities relating to the Public Uses with the construction of any Infrastructure Improvements. Due to such assistance or coordination, Project Manager shall not incur any obligation, responsibility or liability in connection with the Public Uses, including, without limitation, the actual design and construction of the Public Uses.

(e) Compliance With Requirements. In connection with its performance of each and every one of its obligations hereunder and the conduct of all of its activities hereunder, Project Manager shall timely comply in all material respects with any and all applicable Requirements. No consent to, approval of or acquiescence in any plans or actions of Project Manager by any City Party (or agent or representative thereof) under this Agreement shall be relied upon or construed as being a determination that such are in compliance with any of the Requirements. Project Manager will assist Owner in obtaining all required approvals, permits and consents

relating to the Infrastructure Improvements from the applicable Governmental Authority in accordance with all applicable Requirements.

#### Section 3.4 Marketing of Project.

(a) Marketing Plan. Project Manager shall create the Marketing Plan as part of the first Annual Business Plan and shall update the Marketing Plan in connection with each successive Annual Business Plan. Project Manager shall implement the applicable Marketing Plan in a commercially reasonable manner. The Parties agree that the Project will be developed in accordance with a “market segmentation” methodology designed to maximize absorption of the overall Project Site. A marketing research firm will be employed to design and implement such methodology. The Project Representatives shall meet quarterly for the purpose of discussing the implementation of the Marketing Plan. No marketing materials, press releases or any other matters related to the Project shall in any way refer to the System.

(b) Negotiations with Developers. Within sixty (60) days after the Effective Date of this Agreement, Owner and Project Manager shall agree upon the form of Third Party DDA to be executed in connection with any third party’s purchase of a portion of the Project Site for Private Uses. If Owner and Project Manager are unable to agree upon the form of Third Party DDA within such 60-day period, Project Manager shall have the unilateral right to terminate this Agreement and pursue all remedies available to Project Manager under Section 7.5 below. Assuming Owner and Project Manager agree upon the form of Third Party DDA, Project Manager shall prepare (or cause to be prepared) and negotiate, subject to Owner’s approval of the final terms, all letters of intent, purchase agreements, Third Party DDAs and other documents prepared in connection with the sale and development of Blocks or parts thereof in any Phase. Each Third Party DDA shall describe title insurance, escrow arrangements, closing costs and other customary matters related to the sale and purchase of real property in the City. Each Third Party DDA also shall govern and control the development of the balance of the Block to assure compliance with the Block Plan. Before Project Manager solicits offers from third parties to purchase Blocks or any portion of the Project Site, Owner shall have the right to approve the list of persons that can receive offers to purchase portions of the Property.

#### Section 3.5 Scope of Project Manager’s Authority.

(a) Limitation. Without first obtaining the prior written consent of Owner, which consent shall not be unreasonably withheld, delayed or conditioned, Project Manager shall not take any action or incur any obligation on behalf of the City Parties or either of them that does not comply with the applicable Annual Business Plan or the Master Plan. Project Manager agrees that it is not in any way an agent or attorney-in-fact of any of the City Parties and shall not represent that it has such relationship or authority. Project Manager has no power or authority whatsoever to bind in any way any City Party or to grant any interest in the Project.

(b) Emergency. Notwithstanding anything to the contrary set forth herein, in the event of any emergency affecting the safety of persons or property, or which is likely to result in a substantial construction work stoppage, Project Manager shall be authorized to act in a manner intended to mitigate or prevent threatened damage, injury, or loss, and shall be entitled to make expenditures in connection therewith. However, Project Manager shall authorize only such acts

and shall make only such expenditures as Project Manager believes are reasonably required to stabilize the emergency. In addition, Project Manager shall authorize such acts and make such expenditures only after Project Manager has made a reasonable attempt (if circumstances permit) to inform Owner of the cause of such emergency, Project Manager's proposed course of action in connection therewith, and the likely amount of such expenditures.

### Section 3.6 Project Representatives.

(a) Project Manager's Representative. Project Manager hereby designates Dan Van Epp (or his successor for such purpose) as the lead representative ("Project Manager's Representative") to represent Project Manager in all of its dealings with the City Parties and the Owner's Project Representative relating to the implementation and enforcement of this Agreement; provided, however, that, so long as the Project Manager's Representative maintains an active and at least weekly involvement in Project Manager's activities and obligations hereunder, it is acknowledged and agreed that the Project Manager's Representative may delegate certain of his responsibilities to such senior employees of Project Manager or its Affiliates as he may determine from time to time. The City Parties shall direct all communications regarding this Agreement to Project Manager's Representative.

(b) Owner's Project Representative. Within 30 days after the Effective Date, Owner will designate an individual (or his successor appointed for such purpose) as the lead representative ("Owner's Project Representative") to represent the City Parties in all of their respective dealings with Project Manager and Project Manager's Representative relating to this Agreement. Project Manager shall direct all communication regarding this Agreement to the Owner's Project Representative. Notwithstanding the foregoing, in the event that the Owner's Project Representative is unavailable at any time after reasonable notice and attempts to contact him, Project Manager's Representative may direct communication regarding this Agreement to the City Manager during such period of unavailability. In addition, the City Parties may designate a Construction Consultant to act as Owner's Project Representative hereunder.

(c) Meetings and Reports. The Project Representatives will meet regularly with each other and with other representatives of the Parties throughout the Term, with the frequency and scope of such meetings to be determined mutually by the Project Representatives, in their reasonable judgment, based on the then-current status of Project implementation, provided that such meetings shall take place no less than on a quarterly basis. Project Manager shall provide Owner with periodic written reports and briefings concerning the general status of its performance of obligations under this Agreement. The frequency and scope of such written reports and briefings shall be determined mutually by the Project Representatives, in their reasonable judgment, provided that such written reports shall be provided no less than on a quarterly basis. During the periodic meetings, the Project Representatives may approve minor changes in plans regarding the development of the Project, including the Block Plans and the Plans and Drawings.

(d) Inspections. The City Parties reserve the right, at their sole cost and expense, to conduct inspections of any Infrastructure Improvements or Building Developments; provided, however, that the City Parties shall give Project Manager at least 24 hours prior written notice of such inspections and will conduct the same in a manner so as to minimize any disruption to any



construction activities on the Project Site. To the extent within Project Manager's control, Project Manager agrees to provide the City Parties with safe access to the Project Site, including, without limitation, access to inspect the Infrastructure Improvements. No such inspection by the City Parties' on-site representatives shall impose upon the City Parties responsibility or liability for any failure by any Infrastructure Improvements Design and Construction Contractor to observe any Requirements or safety practices in connection with the construction of Infrastructure Improvements or Building Developments, or constitute an acceptance of any work which does not comply with the provisions of this Agreement, and no such inspection shall constitute an assumption by the City Parties of any responsibility or liability for the performance of Project Manager's obligations hereunder, nor any liability arising from the improper performance thereof. No such inspection shall be construed to be in place of or a substitute for all other inspections and approvals required by the Requirements. The City Parties' on-site representatives shall not interfere with the construction of the Infrastructure Improvements or the Building Developments at the Project Site and shall comply with all applicable safety standards and other job-site rules and regulations. Any material interference which is caused by the City Parties' on-site representative(s) shall extend the date for completion of the Infrastructure Improvements one day for each day of such interference. The City Parties' on-site representatives shall serve as inspectors only and shall make only such communications with Project Manager's Representative, the Infrastructure Improvements Design and Construction Contractors (and subcontractors) or any other Person, as are reasonably necessary to enable such on-site representatives to conduct investigations, and in no event shall such on-site representatives give directions to any such Persons.

### Section 3.7 Covenants of City Parties.

(a) Cooperation. Each City Party covenants and agrees with Project Manager that it shall cooperate with Project Manager in Project Manager's performance of its duties set forth herein. Each City Party shall deliver to Project Manager copies of all notices and other material information relating to Project Manager's duties hereunder or the marketing and development of the Project Site, including information concerning Persons with an interest in developing, leasing or using, or participating in the development, leasing or use of, the Project Site or any portion thereof, promptly after the receipt thereof by such City Party.

(b) Confidential Information. Each City Party covenants and agrees with Project Manager that the Confidential Information will be kept strictly confidential, and that it will not disclose the Confidential Information or any part thereof in any manner whatsoever; provided, however, that (a) each City Party may make any disclosure of such Confidential Information to which Project Manager gives its prior written consent; (b) any of such Confidential Information may be disclosed to any employees or contractors of a City Party who needs to know such Confidential Information (it being understood that, before disclosing the any of the Confidential Information or any portion thereof to such employees or contractors, such City Party will inform them of the confidential nature of such Confidential Information and obtain their agreement not to disclose such Confidential Information or any part thereof to any other person) and (c) the Confidential Information may be disclosed if mandated or required by any Requirement. Notwithstanding anything to the contrary contained herein, Project Manager acknowledges that the City Parties may be subject to the public records law set forth in Chapter 239 of the Nevada Revised Statutes.

### Section 3.8 Coordination of Infrastructure Improvements.

(a) Financing. Project Manager and the City Parties agree to work together to find the most economical and cost efficient way to finance the construction of Infrastructure Improvements for each Phase. Subject to the terms and conditions of this Agreement, the Parties have agreed that the Phase I Infrastructure Improvements and the Infrastructure Improvements for each future Phase will be financed by City and designed and constructed by Infrastructure Improvements Design and Construction Contractors who are selected and coordinated by Project Manager, but hired by City. The City Parties shall be responsible for design and construction of the Infrastructure Improvements in a timely fashion which does not unduly impede the orderly development of the Project.

(b) Timing and Condition. City shall use commercially reasonable efforts to issue the Phase I Infrastructure Bonds at the earliest opportunity after the Effective Date of this Agreement and to issue Infrastructure Bonds for future Phases within a reasonable time frame to allow the orderly sale and development of Blocks in accordance with the Marketing Plan. The City's obligation to issue the Phase I Infrastructure Bonds is subject to the City's determination in its reasonable judgment that it can issue Phase I Infrastructure Bonds on reasonable underwriting parameters and past underwriting criteria of the City and the Net Proceeds are sufficient to pay all Infrastructure Construction Costs as set forth in the final infrastructure budget for the Phase I Infrastructure Improvements based on the final and binding Improvements Design and Construction Contracts for the Phase I Infrastructure Improvements. Project Manager agrees that such condition precedent is for the sole benefit of City Parties, who may waive the condition precedent in their sole discretion. Notwithstanding the foregoing language, if the City has not made a binding commitment to fund construction of the Phase I Infrastructure Improvements within one (1) year after the Effective Date of this Agreement, then Project Manager shall have the unilateral right to terminate this Agreement and pursue all remedies available to Project Manager under Section 7.5 below.

(c) Source of Funding. Project Manager agrees that only the Phase I Infrastructure Improvements will be financed with the Net Proceeds from the Phase I Infrastructure Bonds. Similarly, the Infrastructure Improvements in all subsequent Phases shall be financed with the Net Proceeds from subsequently issued Infrastructure Bonds or alternative funding sources arranged by City.

### Section 3.9 Design and Construction of the Infrastructure Improvements.

(a) Approval of Drawings and Budget. Project Manager agrees that, no later than nine (9) months after the Effective Date, Project Manager will cause to be submitted to Owner design development drawings and a proposed final budget for the Phase I Infrastructure Improvements. Project Manager further agrees that, no later than 36 months after the Effective Date, Project Manager will caused to be submitted to Owner design development drawings and a proposed final budget for the balance of the Project Infrastructure Improvements. All such design development drawings and budgets shall be subject to Owner's review, comment and approval, which shall not be unreasonably withheld, delayed or conditioned. The Parties acknowledge that approval by the Council may be required and such approval must be obtained pursuant to the required procedures for presentation of matters to the Council. Project Manager

and Owner agree that all phases of Infrastructure Improvements, including the Phase I Infrastructure Improvements, will be designed and constructed with sufficient capacity to accommodate the overall Project Infrastructure Improvements plan.

(b) Commencement of Construction. Project Manager agrees that actual construction of the Phase I Infrastructure Improvements shall not commence until such time as (i) City agrees in writing that the condition precedent set forth in Section 3.8(b) above has been fulfilled or (ii) City directs Project Manager in writing to proceed with coordinating the construction of the Phase I Infrastructure Improvements notwithstanding that such condition precedent has not been fulfilled.

(c) Payment for Contractual Services. Project Manager shall coordinate the design and construction of the Infrastructure Improvements. Improvements Design and Construction Contracts shall be entered into between Owner and the service provider, such that Owner will pay the service provider directly. To the extent that Project Manager directly pays any service provider under any Improvements Design and Construction Contracts, Project Manager agrees that it shall be entitled to the reimbursement for such payments out of the Net Proceeds when they are available, or alternatively, in accordance with Section 5.6 below. If there are any defects in the design and construction of any Infrastructure Improvements, any liability shall be assumed by the Person who prepared the designs or performed the physical work related to such Infrastructure Improvements.

(d) Procedures. In connection with the design and construction of Infrastructure Improvements, the Parties agree as follows:

- (i) The design and construction of Infrastructure Improvements shall comply with the Requirements, including the Bidding Requirements;
- (ii) Project Manager shall prepare and design, or cause the preparation and design of, development plans and construction plans (collectively, the “Plans and Specifications”) for the Infrastructure Improvements. All Plans and Specifications shall be substantially in accordance with the Master Plan and with the Master Design Guidelines. Project Manager shall not authorize the design or construction of any aspect of the Infrastructure Improvements which materially deviates from the Master Plan or the Master Design Guidelines without first obtaining the written approval of the City, which approval may be withheld at the City’s sole discretion.
- (iii) As soon as practicable but no later than thirty (30) days after Project Manager’s submittal of any Plans and Specifications, City shall review and approve the submittal, which review and approval shall not be unreasonably withheld. City’s failure to disapprove any of the submittals in writing within the 30-day review period shall constitute City’s approval. Any submittals which are properly disapproved shall be resubmitted within thirty (30) days thereof for approval (in accordance with the

procedures described above). Any further revisions reasonably required by the City shall be resubmitted within thirty (30) days.

- (iv) City shall proceed, in accordance with the Bidding Requirements, to bid out the construction of the applicable Infrastructure Improvements with Infrastructure Improvements Design and Construction Contractors, and Project Manager shall provide related advice or support as may be requested by City.

(e) Approval of Specifications and Bids. Project Manager's Representative shall submit to Owner's Project Representative all specifications and bid documentation which are to be used in the procurement and award of contracts in connection with the design and construction of the Infrastructure Improvements. The Project Representatives shall agree upon the content of the specifications and bid documentation, if necessary during a meeting held in accordance with Section 3.6(c) above. Nonetheless, failure by Owner's Project Representative to disapprove any specifications and bid documentation within fifteen (15) days after submittal by Project Manager's Representative shall constitute approval of such documentation by the City Parties.

(f) Approval of Contracts. All Improvements Design and Construction Contracts shall be subject to the prior written review and approval of Owner's Project Representative and shall contain the Required Contract Provisions. As soon as practicable but no later than thirty (30) days after Project Manager's submittal, Owner's Project Representative shall review and approve the submittal to determine compliance with this Agreement, which review and approval shall not be unreasonably withheld, delayed or conditioned; provided that it shall not be deemed unreasonable for Owner's Project Representative to withhold or delay its approval if the proposed contract does not include the Required Contract Provisions. Any submittals which are properly disapproved shall be resubmitted within fifteen (15) days thereof for approval (in accordance with the procedures described above). If Owner's Project Representative approves a submittal, City shall promptly execute the applicable Improvements Design and Construction Contract.

(g) Performance Bonds. Prior to commencement of construction of any Infrastructure Improvements not to be owned by the City, Project Manager shall cause each Infrastructure Improvements Design and Construction Contractor who is acting as a general contractor to obtain payment and performance bonds, and issued by a corporate surety authorized to do business in the State and in a form and content reasonably acceptable to City. In lieu of submitting payment and performance bonds, City agrees that Project Manager may cause each Infrastructure Improvements Design and Construction Contractor to submit another form of insurance coverage for the same risks which provide the City Parties with the same coverage, rights and powers in all respects as such performance bonds and which comply with all applicable Requirements.

(h) Change Orders. Any change order which exceeds or violates the Change Order Parameters requires City's approval, which may be withheld in City's sole discretion. Other change orders are not subject to such approval requirements. Project Manager will prepare required documentation for City's review with respect to change orders requiring City's

approval. City shall either approve or disapprove the proposed change order within five (5) business days following the request therefor. If City does not respond within such 5-day period, the change order shall be deemed approved except for a change order which exceeds or violates the Change Order Parameters which shall be deemed disapproved. Notwithstanding the foregoing, Project Manager may, without City's prior consent, authorize in the field change orders affecting the construction or cost of the applicable Infrastructure Improvements if construction of such Infrastructure Improvements has been commenced and Project Manager has been unable to obtain City's approval as required hereunder in respect of any change order and Project Manager, in its sole opinion acting reasonably, has determined that if a decision in respect of such change order is not made, such failure will likely stall or delay the construction of the Infrastructure Improvements for such period of time as will adversely effect the ability of Project Manager to comply with its obligations under this Agreement; provided, however, that Project Manager notifies the Owner's Project Representative in writing of such change order promptly thereafter.

(i) Enforcement. In the event any construction work for any Infrastructure Improvements is not done in accordance with the applicable Plans and Specifications applicable thereto or is not otherwise in accordance with the provisions of this Agreement, or any such work is damaged or defective, City Parties shall enforce their rights and remedies available in the specific contract.

#### Section 3.10 Access and Review of Project Manager's Books and Records.

Project Manager shall at all times keep and maintain on the Project Site (separate from any of Project Manager's other books, records and accounts) accurate and complete records pertaining to the Infrastructure Improvements, including, without limitation, such matters required to demonstrate Project Manager's compliance with its obligations under this Agreement with respect to the Infrastructure Improvements. Each City Party and its representatives shall have, during normal business hours and upon reasonable advance notice to Project Manager, access to inspect, review and photocopy and any and all such books and records of Project Manager relating to the Infrastructure Improvements.

#### Section 3.11 Project Manager's Access to Project Site.

(a) Tests and Consultants. Project Manager, and its representatives (including, without limitation, architects and engineers) will have the right to enter upon and inspect the Project Site as Project Manager may reasonably determine necessary and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of Nevada as Project Manager may reasonably require, provided that such inspections and tests will not materially damage the Project Site in any respect. Project Manager agrees that prior to undertaking any type of tests, investigations or other activities which involve borings, soil removal or any other penetration of the surface of the Project Site, Project Manager will provide Owner with a copy of the engagement letter with the consultant retained by Project Manager and a detailed description of the intended scope of activities on the Project Site. Project Manager agrees that such plan shall be subject to the approval of Owner which approval shall not be unreasonably withheld. Project Manager agrees that Owner shall have the right to have its representatives present during such activities. In

addition, Project Manager acknowledges that Union Pacific Railroad may have to be notified of such investigations and has the right to have representatives present during such investigations.

(b) Costs and Liability. All such tests and inspections shall be conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations. Project Manager will promptly restore the Project Site to its original condition as existed prior to any such inspections and/or tests. If Project Manager, its agents, representatives or employees undertake any boring or other disturbance of the soil, the soil so disturbed will be recompact to the original condition of the Project Site and Project Manager will obtain at its own expense a certificate from a soils engineer which certifies that such soil so disturbed has been recompact to the original condition of the Project Site. To the extent that any costs for damages and/or injuries are not covered by any insurance policy protections or are in excess of the insurance policy limits, Project Manager agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to Owner) City Parties and their respective affiliates or assignees and their respective officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including attorneys' fees) of whatsoever nature growing out of or in connection with personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by Hazardous Materials introduced onto the Project Site as a result of Project Manager's tests or inspections and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Project Site by, or the presence thereon of, Project Manager, its officers, agents or employees and occurs from any such cause. Notwithstanding the above language, Project Manager shall not have any liability or indemnity obligation with respect to the presence or remediation of Hazardous Materials which existed on or under the Project Site before Project Manager's commencement of any tests or inspections authorized hereunder. The indemnity obligations of Project Manager under this Section will survive any termination of this Agreement. Project Manager covenants and agrees upon request of Owner to promptly deliver to Owner without charge therefore, the results and copies of any and all third party feasibility studies including but not limited to environmental studies, soils studies, market studies and financial analyses and related correspondence.

## **ARTICLE IV**

### **PLANNING OF BUILDING DEVELOPMENTS; PUBLIC USES; PUBLIC PARKING; CONDITION OF PROJECT SITE**

#### **Section 4.1 Planning and Oversight of Building Developments.**

In connection with each Annual Business Plan, Project Manager shall cause the preparation of, and submit to Owner, a current Building Development Program. Project Manager agrees that all Building Developments will be planned in compliance with the Master Plan, Master Design Guidelines and the terms and conditions of this Agreement. Project Manager shall provide reasonable coordination of the design and construction of Building Developments, including the coordination of access to utilities and coordination of the construction of Infrastructure Improvements.

#### Section 4.2 Design Review Committee.

Within 120 days after the Effective Date of this Agreement, Project Manager shall coordinate the establishment of a committee responsible for the review and approval of proposed designs for all proposed development within the Project (the "Design Review Committee"). The CC&Rs will govern the appointment of representatives to the Design Review Committee and the procedure for all meetings to be held by the Design Review Committee. The Design Review Committee shall consist of five (5) members at all times. Project Manager shall nominate two of the initial members, as follows: (1) the Project Manager's Representative or his designee; and (2) a business person associated with development of the Project Site who is knowledgeable about mixed-use development projects. Owner must decide whether to approve or disapprove, in Owner's reasonable discretion, each of Project Manager's nominated members within ten (10) days after Project Manager notifies Owner in writing with respect to each proposed nomination. Owner may not disapprove Project Manager's Representative as a member of the Design Review Committee, but may disapprove his designee for good cause. Owner shall appoint three members of the Design Review Committee.

#### Section 4.3 Building Development Approval.

(a) Block Plans. If and when Project Manager or a third party purchaser elects to proceed with the actual development and construction of a specific Building Development, Project Manager or the third party purchaser (as applicable) shall cause to be submitted to the Design Review Committee for review and written approval, which approval shall not be unreasonably withheld, delayed or conditioned, basic concept plans containing the overall plan for development of Building Developments on the Block on which the proposed Building Development is to be located, including related infrastructure and site improvements, including conceptual drawings for Building Developments on the balance of the Block ("Block Plans"). A copy of the Block Plans shall be submitted simultaneously to the Mayor and the Councilmember in whose district the Project Site is located. The Block Plans shall include a site plan, elevations and an architect's rendering, approximate sizes of Building Developments, approximate number of residences and sizes of residential units in residential Building Developments and such other items as the Design Review Committee may reasonably request. The Design Review Committee may retain such design and engineering consultants as necessary to review the Block Plans and shall approve or disapprove the Block Plans within thirty (30) days of the submittal. The Mayor and the applicable Councilmember also shall approve or disapprove the Block Plans within such 30-day period, provided that their approval shall not be unreasonably withheld, delayed or conditioned. Failure to either approve or disapprove within such 30-day period shall be deemed an approval by the responsible decisionmaker. Any disapproval shall state in writing the reasons for disapproval. Any submittals which are properly disapproved shall be resubmitted within thirty (30) days thereof for approval (in accordance with the procedures described above). If and when the Design Review Committee and the Mayor and relevant Councilmember have approved the Block Plans, the Design Review Committee shall promptly deliver to the Planning Commission a recommendation for approval of the Block Plans. The Planning Commission shall render its final decision whether to approve or disapprove the Block Plans within 30 days after receipt of the Design Review Committee's recommendation. Failure by the Planning Commission to approve or disapprove the Block Plans within such 30-day period shall be deemed an approval. All Building Developments within any Block shall be developed as

generally established in the Block Plans and related documents, except as changes may be mutually agreed upon in writing by the Design Review Committee. The Parties acknowledge and agree that Project Manager or a third party purchaser may acquire a Block in incremental portions, subject to the following: (i) any portion of a Block which shall be developed for a discrete development use, such as, by way of example but not limitation, a building site, a parking area or a plaza area must be acquired; (ii) any such acquisition shall be in compliance with the Subdivision Map; and (iii) any such acquisition shall be in compliance with the Block Plans such that the remainder of the Block can be developed in compliance with the approved Block Plans. Notwithstanding that Project Manager caused to be submitted to the Design Review Committee conceptual plans for development of the portion of the Block that Project Manager is not acquiring, Project Manager subsequently may submit different plans for Building Developments within such Block pursuant to this Section 4.3 so long as such plans are in compliance with the Master Plan and the terms and conditions of this Agreement.

(b) Plans and Drawings. Upon approval of Block Plans, Project Manager shall cause to be submitted to the Design Review Committee for its review and approval, which shall not be unreasonably withheld, delayed or conditioned, the following plans drawings, related documents and any subsequent revisions thereto ("Plans and Drawings") for the initial Building Developments to be constructed within the Block:

- (i) architectural plans;
- (ii) plot grading utility plans;
- (iii) structural plans;
- (iv) mechanical and electrical plans; and
- (v) landscaping plans.

The Design Review Committee shall approve or disapprove the Plans and Drawings in accordance with the standards set forth in Section 4.4 below within thirty (30) days of the submittal. Failure by the Design Review Committee to either approve or disapprove within such time shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval. Any submittals which are properly disapproved shall be resubmitted within thirty (30) days thereof for approval (in accordance with the procedures described above).

#### Section 4.4 Purposes and Requirements of Design Review Committee.

(a) Purposes. The review and approval of both the Block Plans and the Plans and Drawings for a specific Building Development are for the following primary purposes:

- (i) A determination that the proposed Block Plans and Building Developments are in compliance with the Master Plan and Master Design Guidelines;



- (ii) A determination that the proposed Block Plans and Building Developments are consistent in quality with a Class-A, urban planned community; and
- (iii) A determination that the proposed Block Plans and Building Developments, any other Building Developments under construction and any existing Building Developments taken collectively provide the overall density, mix of uses and mix of heights and building types as contemplated by the Master Plan and Master Design Guidelines.

Project Manager, the City Parties and the members of the Design Review Committee shall not incur any liability or financial obligation in connection with the construction of a Building Development as a result of or arising from any approvals relating thereto given or withheld (or the right to give or withhold such approvals) pursuant to this Agreement, or as a result of or arising from any other right to review, comment on or evaluate any plans, drawings, specifications or other documents in connection with the construction or use of a Building Development. If there are any defects in the design and construction of any Building Developments, any liability shall be assumed by the Person who prepared the designs or performed the physical work.

(b) Requirements. Project Manager agrees that nothing in this Agreement shall affect or limit in any way affect Project Manager's responsibility, upon electing to develop a Building Development on its own accord, to seek, obtain and comply with the conditions of any and all Requirements necessary to develop a Building Development or any portion thereof and to obtain the approval and permits from all applicable Governmental Authorities, including, without limitation, all required permits, licenses and approvals of the City or any department or division thereof.

#### Section 4.5 Approved Building Developments.

To the extent practicable, the Design Review Committee shall ensure that Approved Building Developments are constructed in compliance with the approved Plans and Drawings.

#### Section 4.6 Public Uses.

(a) Scope of Use. Owner and Project Manager acknowledge that the Public Uses are planned for Phase I of the Project. In connection therewith, Owner and/or City will continue to negotiate in good faith with those groups sponsoring the LVPAC and KMF for their respective projects in order to enter into binding agreements for the development of the PAC and/or the Alzheimer Clinic within Phase I. Project Manager agrees and acknowledges that (i) many of the factors relating to the development of such projects are speculative and out of the control of the Owner and/or the City and (ii) no City Party is guaranteeing that any of the Public Uses will actually be constructed. Neither Project Manager nor any City Party will have any liability whatsoever if all or any of the Public Uses are not constructed on the Project for any reason whatsoever.

(b) Reservation of Acreage. Notwithstanding the foregoing paragraph (a), City, Owner and Project Manager agree as follows in connection with the Public Uses:

- (i) In connection with the PAC, Owner shall make up to 4.3 acres in the Project available at no cost for the PAC to be located in the area set forth in the Master Plan.
- (ii) In connection with the Alzheimer Clinic, Owner shall make approximately two acres in the Project available at no cost for the Alzheimer Clinic to be located in the area set forth in the Master Plan and such additional acreage as may be required (up to the full acreage within Block A shown on the Master Plan) pursuant to City's final agreement with the Alzheimer Clinic.

(c) Academic Medical Center. Project Manager and Owner agree and acknowledge that currently the Academic Medical Center is in the initial planning stages and no actual detailed uses or transactions are proposed or are pending. In connection with the Academic Medical Center, no City Party shall have any obligation to make any land available at no cost or at any price discounted from the then fair market value to any proposed user or to provide any other incentive or subsidy to any user within the Academic Medical Center. Project Manager and Owner agree that the land for the proposed Academic Medical Center shall be reserved for uses consistent with an Academic Medical Center unless each of Owner and Project Manager agree in writing, at their respective sole discretion, to a use that is not consistent with an Academic Medical Center. Notwithstanding the foregoing, if construction on at least three (3) acres of the Academic Medical Center has not commenced within five (5) years of the Effective Date, then the Parties agree that the land reserved for use as the Academic Medical Center shall be deemed released from such reserved use and may be used for any other use consistent with the Master Plan to which the Parties may mutually agree by an appropriate amendment to the Master Plan provided, however, that any existing agreements relating to the Academic Medical Center with third parties shall be honored notwithstanding that construction has not yet commenced pursuant to such agreements.

(d) No Liability. Except as set forth in this Section 4.6, no City Party shall have any obligation whatsoever to consummate any agreement with any Person for a Public Use. Neither Project Manager nor any City Party shall have any liability in the event all or any of the Public Uses are not developed on the Project.

#### Section 4.7 Sports Stadium.

(a) Cooperation. Owner and Project Manager acknowledge that the Master Plan designates an approximately 18.8 acre site as the future location of a Stadium and related parking. Owner and Project Manager acknowledge that the location of a major league sports franchise in Las Vegas, the financing of the development of the Stadium and the completion of all other elements required to create a major league sports franchise in Las Vegas on the Project are highly speculative and outside of the control of Owner, City and/or Project Manager. The Parties agree to work cooperatively in order to attempt to locate a major league sports franchise on the Project; provided, however, that no Party shall have any liability whatsoever to any other Party in connection therewith, including, without limitation, any obligation of Owner, City or

Project Manager to provide any funding, financing or other monetary consideration in connection with any element of the location of a major league sports franchise on the Project, the development and construction of the Stadium, or to approve or sponsor any public funding or financing proposal in connection therewith. Notwithstanding anything to the contrary contained in this Agreement, Project Manager agrees that Project Manager has no exclusive right to act as the developer of the Stadium and the City Parties are free to deal with other parties in connection with the development of the Stadium.

(b) Price. Project Manager further agrees that Owner shall be free to negotiate any price for the Stadium site that Owner determines in its sole discretion, so long as the Stadium site is used for construction and operation of a Stadium.

(c) Reservation of Site. The Parties agree that, notwithstanding the foregoing provisions of this Section 4.7, the Stadium site shall be reserved for a period of one (1) year after the Effective Date of this Agreement and shall not be marketed for any use other than the Stadium unless (i) Owner determines in its good faith judgment that the location of a major league sports franchise is not feasible and (ii) Project Manager approves such determination in writing, which approval shall not be unreasonably withheld. If City Parties have not received a binding written commitment to locate a major league sports franchise on the Stadium Site within the one-year period, the Parties shall be required to consider and market alternative uses of the Stadium site so long as such uses are consistent with the Master Plan.

#### Section 4.8 Public Parking.

(a) Cooperation. Project Manager and Owner acknowledge that Public Parking either in the form of temporary surface parking or permanent structures may be at appropriate times a possible part of a solution to accommodate the overall parking demands of a Phase. Owner and Project Manager shall work together in good faith to plan and formulate solutions for public parking within all Phases.

(b) Non-Business Hours. Project Manager and Owner mutually agree, however, that all commercial, nonresidential Building Developments within the Project will be required to make available any parking facilities related thereto or specified portions thereof for public parking at all times other than regular business hours. Project Manager and Owner agree that when any portion of the Project Site to be developed for any commercial, nonresidential Building Development is conveyed by Owner, such conveyance shall be subject to a recorded easement or other appropriate instrument in recordable form setting forth the requirements of this paragraph (b).

#### Section 4.9 Presence of Hazardous Materials.

The Parties acknowledge that they are aware of the presence of Hazardous Materials on or under portions of the Project Site and the need to conduct remediation of such Hazardous Materials as part of any development of the Project Site in compliance with all Environmental Laws. Except as otherwise expressly set forth herein, Project Manager shall not hereunder undertake any responsibility or assume any liability with respect to the presence or remediation of any Hazardous Materials on or under any portion of the Project Site.

#### Section 4.10 Project Name.

The Parties agree that the Project shall be referred to at all times by the name of Union Park or such other name as mutually agreed upon by the Parties. The Parties shall take commercially reasonable steps to protect the exclusive use of such project name, including the submittal of appropriate trademark or tradename applications to the appropriate Governmental Authority and the prosecution of any actions to prevent or discontinue any infringement of any intellectual property rights in the project name.

#### Section 4.11 Representations.

(a) Brokers. The City Parties and Project Manager each represents to the other that, except as disclosed in writing to the other Parties or as provided in this Agreement, it has not dealt with any broker, finder or like entity in connection with this Agreement or the transactions contemplated hereby, and each Party indemnifies the other against any claim for brokerage commissions, fees or other compensation not provided for in this Agreement and sought by any Person alleging to have acted for or dealt with the indemnifying Party in connection with this Agreement or the transactions contemplated hereby.

(b) Legal Authority. The City Parties and Project Manager each represents to the other that each Person executing this Agreement on behalf of a City Party or Project Manager (or in any representative capacity), as applicable, has full right and lawful authority to execute this Agreement. Project Manager agrees to furnish to Owner on or prior to the date of execution of this Agreement true and correct copies of such instruments or documents evidencing, to Owner's reasonable satisfaction, the authority of each such Person executing this Agreement on behalf of Project Manager (or in any representative capacity).

### ARTICLE V

#### EXCLUSIVE RIGHTS AND COMPENSATION

##### Section 5.1 Reserved Block Option Right.

(a) Term. In consideration for Project Manager's provision of services for Owner's benefit in accordance with this Agreement, Owner hereby grants to Project Manager an option to purchase the Reserved Blocks at then fair market value determined in accordance with Section 5.3 (the "Reserved Block Option Right"). The term of the Reserved Block Option Right shall commence on the Effective Date of this Agreement and shall expire three (3) years after the Effective Date if Project Manager has not consummated the acquisition of at least one Reserved Block and obtained a building permit for the construction of a Private Use thereon within such three-year period; provided, however, that the term of the Reserved Block Option Right shall be extended automatically due to Unavoidable Delay, delay associated with the determination of the purchase price in accordance with Section 5.3 below, or the failure of either of the following events to occur during the initial 3-year period: (i) City's final approval of the revised version of the Master Plan in accordance with Section 3.2; or (ii) City's complete funding of construction of the Phase I Infrastructure Improvements.

(b) Exercise of Right. Project Manager may exercise the Reserved Block Option Right by delivering to Owner's Project Representative, before the expiration of the term (as it may be extended), a written notice stating Project Manager's intent to exercise the Reserved Block Option Right and proposing a purchase price based upon documentation prepared by a qualified appraiser and/or real estate consultant showing the then fair market value of the Reserved Blocks (assuming no environmental contamination thereon) and the anticipated fiscal and economic benefit to City arising from development of Private Uses on the Reserved Blocks. Project Manager's failure to deliver a timely written notice shall be deemed Project Manager's election not to acquire the Reserved Blocks. Project Manager's exercise of the Reserved Block Option Right must apply to all of the Reserved Blocks (i.e., Project Manager must elect to acquire all or none of the Reserved Blocks); provided, however, that Project Manager may acquire the Reserved Blocks in up to four phases so long as (i) the first Reserved Block is acquired within three (3) years after the Effective Date of this Agreement and (ii) the last sequential Reserved Block is acquired within two (2) years after the close of escrow constituting Project Manager's acquisition of the first Reserved Block.

## Section 5.2 Contract Period.

(a) Negotiation. Within sixty (60) days after the Effective Date of this Agreement, Owner and Project Manager shall agree upon the form of Project Manager DDA to be executed in connection with Project Manager's potential purchase of the Reserved Blocks. If Owner and Project Manager are unable to agree upon the form of Project Manager DDA within such 60-day period, Project Manager shall have the unilateral right to terminate this Agreement and pursue the remedies set forth in Section 7.5 below. Assuming Owner and Project Manager have agreed upon the form of Project Manager DDA, then upon Project Manager's delivery of a written notice (the "Option Notice") exercising its Reserved Block Option Right or its Reserved Block Refusal Right (collectively, the "Option Rights"), Owner's Project Representative and Project Manager shall negotiate in good faith for a period of ninety (90) days after the date of the Option Notice (the "Contract Period") to enable City Parties and Project Manager to enter into the final Project Manager DDA, in substantially the same content as the earlier agreed upon form of Project Manager DDA, whereby Owner shall sell to Project Manager, and Project Manager shall purchase from Owner, the Reserved Blocks for the purchase price determined in accordance with Section 5.3 below. The Project Manager DDA shall allocate to City either the direct responsibility or the cost associated with full remediation of any contamination affecting the Reserved Blocks. The Contract Period shall be extended automatically, where the appraisal procedure is used in accordance with Section 5.3(b) below or where the dispute resolution procedure is used in accordance with Section 5.3(d) below, until fifteen (15) days after the completion of the appraisal procedure or fifteen (15) days after the completion of the dispute resolution procedure, whichever is later.

(b) Reserved Block Refusal Right. Owner hereby grants to Project Manager a right of first refusal to purchase the Reserved Blocks (the "Reserved Block Refusal Right") whereby, if the City Parties and Project Manager do not execute the Project Manager DDA for the Reserved Blocks within the applicable Contract Period, then for a period of one hundred eighty (180) days after the expiration of the Contract Period, Owner may not enter into an agreement for the sale of any Reserved Blocks to a proposed purchaser or otherwise transfer or convey any Reserved Blocks without first offering such Reserved Blocks for sale to Project Manager on the

same terms offered or negotiated with the proposed purchaser. Project Manager shall have thirty (30) days after receipt from Owner of a written notice of an arms-length proposed purchase or conveyance to decide whether or not to acquire the applicable Reserved Blocks on the same terms offered or negotiated with the proposed purchaser. Project Manager's failure to deliver an Option Notice to Owner's Project Representative within the 15-day period shall be deemed an election not to acquire the Reserved Blocks. If Project Manager elects to acquire the Reserved Blocks, then for a period of thirty (30) days after the date of the written notice, Owner's Project Representative and Project Manager will negotiate in good faith to enable City Parties and Project Manager to enter into the Project Manager DDA, in substantially the same content as the earlier agreed upon form of Project Manager DDA, whereby Owner shall sell to Project Manager, and Project Manager shall purchase from Owner, the applicable Reserved Blocks based on the same terms offered or negotiated with the proposed purchaser.

### Section 5.3 Determination of Purchase Price.

(a) Response to Proposed Price. Among other things, any Project Manager DDA entered into as a result of Project Manager's exercise of the Option Rights shall specify the agreed upon purchase price, determined in accordance with this Section 5.3. Owner's Project Representative shall accept the proposed purchase price set forth in the Option Notice, within thirty (30) days after the date of the Option Notice, if such proposed purchase price is calculated in accordance with the standards set forth in Section 5.1(b) above, as confirmed by an appraisal performed at Owner's request dated within six (6) months from the date of the Option Notice.

(b) Appraisal. If Owner's Project Representative initially rejects the proposed purchase price set forth in the Option Notice, then Owner's Project Representative and Project Manager shall negotiate in good faith for a period of thirty (30) days in an effort to reach an agreement on the purchase price. If such effort is unsuccessful, then Owner's Project Representative and Project Manager shall select a mutually acceptable appraiser who shall determine the fair market value of the Reserved Blocks, assuming no environmental contamination, but taking into account the anticipated fiscal and economic benefit to City arising from development of Private Uses on the Reserved Blocks. If the Parties are unable to agree upon an appraiser, Owner's Project Representative and Project Manager shall each select an appraiser (or shall use the appraisals already completed in connection with Project Manager's initial offer and Owner's Project Representative's consideration of the proposed purchase price in the Option Notice). If the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is less than or equal to ten percent (10%) of the lower of the two appraisals, then fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser. If the third appraisal is less than either of the first two, then fair market value shall be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then fair market value shall be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the fair market value shall be the value established by the third appraisal. Owner and Project Manager shall share the cost equally of any appraiser jointly selected or shall pay the costs of the appraiser they each select and shall share the cost equally of any third appraiser.

Any appraiser used for purposes of determining fair market value of the Reserved Blocks shall be an MAI appraiser with at least ten (10) years of appraisal experience.

(c) Council's Consideration. At the earliest practical opportunity, Owner's Project Representative shall cause a public hearing to be held, during which Owner's Project Representative shall recommend that the Council (i.e., Owner's board of directors) approve the proposed final Project Manager DDA, which shall reflect the purchase price determined in accordance with Section 5.2(b) above (in the event of an exercise of the Reserved Block Refusal Right) or Section 5.3(a) or Section 5.3(b) above (in the event of an exercise of the Reserved Block Option Right). The Council shall approve the proposed final Project Manager DDA so long as it contains substantially the same content as the earlier agreed upon form of Project Manager DDA and reflects a purchase price calculated in accordance with the standards set forth in Section 5.1(b) above.

(d) Dispute Resolution. If the Council rejects the proposed final Project Manager DDA despite the recommendation of Owner's Project Representative, the Council shall state all reasons for such rejection on the record. Within fifteen (15) days after the Council's rejection of the proposed final Project Manager DDA, Project Manager may elect in writing to have the dispute regarding the proposed final Project Manager DDA resolved in accordance with the dispute resolution procedure set forth in Section 11.12 below. The outcome of such dispute resolution procedure shall be binding on Project Manager and the City Parties.

#### Section 5.4 Option Memorandum.

Upon execution of this Agreement, Owner and Project Manager shall execute a memorandum of option agreement in the recordable form of Exhibit "F" (the "Option Memorandum"). Owner irrevocably authorizes Project Manager to cause the executed Option Memorandum to be filed in the County Recorder's Office against the Project Site so as to provide record notice of the Option Rights granted to Project Manager hereunder. Project Manager shall sign and deliver to Owner one or more partial quitclaim deeds on or before the date of sale of any portion of the Reserved Blocks to a third party or a full quitclaim deed upon the expiration or earlier termination of this Agreement.

#### Section 5.5 Sales Management Fees.

In further consideration for Project Manager's provision of services for Owner's benefit in accordance with this Agreement, Owner hereby agrees to pay a sales management fee to Project Manager in connection with the sale of any portion of the Project Site to a third party for a Private Use, including, without limitation, any area originally proposed for Public Use but converted to Private Use ("Sales Management Fee"). The Sales Management Fee shall equal four percent (4%) of the purchase price for the sale of any applicable real property. Project Manager shall receive payment of any Sales Management Fees, upon the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement, taking into account any extension of the Term of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty

(20) days after the date of expiration or termination, such third party purchaser as a Person to whom Project Manager marketed a portion of Project Site).

#### Section 5.6 Reimbursement of Project Costs.

(a) Definition of Project Costs. "Project Costs" means (i) all costs and expenses payable by the City Parties as specified in the first Annual Business Plan and any update thereto by Project Manager, provided that City shall approve in writing any updated definition of "Project Costs" provided by Project Manager, (ii) any costs or expenses necessary in an emergency situation to protect the wealth, safety or welfare of people or property in the Project Site (provided City has received notice of such occurrence within a reasonable time and subject to City's reimbursement by available insurance), and (iii) all costs, liabilities, damages and expenses assumed by the City Parties under this Agreement (subject to Owner's reimbursement by available insurance). Project Costs shown on the Annual Business Plan shall include, without limitation, the following categories of costs relating to activities which benefit the Project or any Phase therein: entitlements; planning and design of Infrastructure Improvements; environmental remediation; mitigation or development fees; Infrastructure Construction Costs; Infrastructure Bonds Costs; bond payments; permitting fees; direct improvement costs for amenities benefiting the entire Project; property taxes and assessments; master marketing costs; expenses incurred in the drafting and negotiation of all agreements relating to the development of Public Uses as well as all Third Party DDAs and other purchase documents and the closing of all transactions involving the acquisition of any portion of the Project Site (except Project Manager's acquisition of the Reserved Blocks); expenses incurred in the review of proposed Block Plans and Plans and Designs for Building Developments, including all costs of operating and managing the Design Review Committee; assessment district/CFD costs; park improvements; school fees; legal fees (except those related to the drafting and negotiation of this Agreement); sales commissions (if permitted by City); insurance; financing costs; business licenses, permits and fees specifically required for the Project as a whole; payments of all compensation, salaries and benefits to employees (including but not limited to a project manager, marketing specialist, administrative assistant and bookkeeper/accountant) who provide day-to-day oversight and management of the Project; and payment of rent and overhead expenses for office space in Las Vegas maintained for the purpose of providing a local headquarters for employees who oversee the Project. Project Costs shall exclude the payment of compensation, salaries or benefits normally paid by Project Manager to Project Manager's Representative and any principals or shareholders who work in a location other than the office space in Las Vegas arranged by Project Manager pursuant to this Agreement; provided, however, that Project Costs shall include expenses incurred by employees, representatives or agents (e.g., in-house legal counsel) of Project Manager, whether or not located in Las Vegas, with respect to the drafting and negotiation of all agreements relating to the development of Public Uses as well as all Third Party DDAs and other purchase documents, the closing of all transactions involving the acquisition of any portion of the Project Site (except Project Manager's acquisition of the Reserved Blocks), travel costs to and from the Project Site and the accounting of all Project Costs incurred by Project Manager.

(b) Financial Obligation. The City Parties shall be responsible for payment and/or reimbursement of all Project Costs.



(c) Third Party Invoices. For all Project Costs payable to third parties and to the extent such third parties have not presented demand for payment directly to the City Parties, Project Manager shall present to City a written order, accompanied by an invoice, calling for a check payable to a Person for work done pursuant to this Agreement or materials furnished or incorporated in such work. Within 30 days after presentation of any invoice, City shall deliver checks directly to the Person identified as the payee in the applicable invoice.

(d) Reimbursement to Project Manager. For all Project Costs payable to Project Manager, Project Manager shall present to City a monthly invoice which details all Project Costs incurred by Project Manager during the preceding calendar month. Project Manager shall be entitled to payment of interest at the rate of 7.5% per annum, compounded monthly, on all invoiced amounts, accruing thirty (30) days after each invoice is presented to City. City shall reimburse Project Manager for all Project Costs reflected in a monthly invoice, plus all accrued interest thereon. Notwithstanding any other provision of this Agreement, City shall retain the ability to reimburse invoiced amounts to Project Manager within thirty (30) days after receipt of the applicable invoice, so as to avoid paying any accrued interest on invoiced amounts. With respect to any Infrastructure Construction Costs or Infrastructure Bonds Costs incurred by Project Manager, if any, City's reimbursement of Project Manager shall occur out of the Net Proceeds when they are available. City's reimbursement of Project Manager for all other Project Costs (and for any Infrastructure Construction Costs or Infrastructure Bonds Costs where Net Proceeds are not available within one year after Project Manager submits an invoice covering such costs) shall occur in either of the following methods until Project Manager has been fully reimbursed:

- (i) If Project Manager exercises any Option Right and consummates the purchase of the Reserved Blocks, the reimbursement shall take the form of a credit in Project Manager's favor against the purchase price for the Reserved Blocks upon the closing of such purchase; and
- (ii) If Project Manager elects not to exercise the Option Rights in a timely fashion, the reimbursement shall be paid from positive net revenue generated by the City Parties with respect to the sale or commercial operation of any Blocks within the Project Site.

(e) Full Reimbursement. Notwithstanding the timing of reimbursement set forth in the preceding paragraph, the City Parties shall reimburse Project Manager directly for any invoiced amount and accrued interest thereon which has not been reimbursed within three (3) years after the date that Project Manager presented the applicable invoice to City. In any event, if Project Manager is owed any reimbursement upon expiration or earlier termination of this Agreement, then City shall pay the full reimbursement amount (including all accrued interest) directly to Project Manager within thirty (30) days after the date of expiration or earlier termination.

#### Section 5.7 Private Association.

Project Manager and the City Parties shall cooperate in establishing a private property owner's association (the "Private Association") that will be responsible for the operation,

maintenance and repair of all completed Infrastructure Improvements and improved common areas benefiting the Project Site as a whole, to the extent not subject to a public dedication. The Private Association shall be governed by a board of directors comprised initially of three members: (i) the Project Manager's Representative or his designee; (ii) the Owner's Representative or his designee; and (iii) a member selected mutually by the Project Manager's Representative and the Owner's Representative. The Private Association shall be established before the issuance of any certificate of occupancy allowing a Private Use to be operated on the Project Site.

## ARTICLE VI

### EXTENSION OF TERM

#### Section 6.1 Performance Standards.

Project Manager shall be entitled, at its sole election, to an automatic extension of the initial Term of this Agreement for another five-year period ("Automatic Extension") if all of the following objective performance standards have been satisfied before the fourth anniversary of the Effective Date of this Agreement, subject to any Unavoidable Delays or other delay as described in Section 5.1(a) above:

- (a) At least five (5) Blocks have been acquired by Project Manager or a third party in contemplation of development of uses in accordance with the Master Plan;
- (b) Construction of the Phase I Infrastructure Improvements has been Substantially Completed, except where delays in such construction have been caused due to lack of adequate financing or City's failure to authorize commencement of construction; and
- (c) Completion of at least three (3) buildings on the Project Site that constitute Private Uses.

#### Section 6.2 Determination of Extension.

Upon satisfaction of all objective performance standards (or failure to achieve any such standards due to Unavoidable Delays), and provided that there is no uncured Project Manager Default then in existence, Project Manager may, but is not required to, elect to cause the Automatic Extension by delivering to City Parties written notice of such election (the "Extension Notice") at least one hundred eighty (180) days before the expiration of the initial Term. Within thirty (30) days after the delivery of the Extension Notice, City Parties must notify Project Manager in writing if they object in any way to Project Manager's entitlement to the Automatic Extension ("Objection Notice"). If an Objection Notice is not delivered within the 30-day period, the Automatic Extension shall be deemed valid and fully binding on the Parties. If an Objection Notice is timely delivered, the Parties shall meet and confer in a good faith attempt to resolve the dispute within fifteen (15) days after the date of the Objection Notice. If no resolution is achieved within such 15-day period, Project Manager may elect to have the dispute resolved in accordance with the dispute resolution procedures set forth in Section 11.2 below. The Term of this Agreement shall be extended, if necessary, to allow completion of the dispute resolution procedure.

Section 6.3 Mutual Agreement.

Regardless of whether the objective performance standards have been timely achieved, the Parties may mutually agree in writing to extend the Term as they deem appropriate.

**ARTICLE VII**

**DEFAULT AND TERMINATION**

Section 7.1 Default by Project Manager.

Each of the following events shall be a "Project Manager Default" hereunder:

(a) if Project Manager fails to observe or perform in any material respect any material term, covenant or condition of this Agreement on Project Manager's part to be observed or performed (other than the covenants for the payment of amounts due hereunder or as expressly set forth below) and Project Manager shall fail to remedy such failure within thirty (30) days after notice is given by Owner (any such notice of failure given by Owner under this Agreement being referred to herein as a "Project Manager Default Notice") with respect to such failure or, if such failure is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Project Manager does not (i) within thirty (30) days after the giving of such Project Manager Default Notice, commence action (and from time to time, as reasonably requested by Owner, Project Manager shall advise Owner of the action being taken) necessary to remedy such failure (which such action shall be reasonably designed to effectuate the cure of such failure in a professional manner), and (ii) diligently prosecute to completion the cure of such failure; or

(b) if Project Manager makes or suffers a Transfer which is not expressly permitted under this Agreement; or

(c) if Project Manager admits, in writing, that it is generally unable to pay its debts as such become due; or

(d) if Project Manager makes an assignment for the benefit of creditors; or

(e) if Project Manager files a voluntary petition under Title 11 of the United States Code or files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Project Manager, of all or any substantial part of its properties, and the foregoing are not stayed or dismissed within thirty (30) days after such filing or other action; or

(f) if, within sixty (60) days after the commencement of a proceeding against Project Manager seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding

has not been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Project Manager, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Project Manager, of all or any substantial its properties, such appointment has not been vacated or stayed on appeal or otherwise.

## Section 7.2 Owner's Remedies.

(a) Election. If a Project Manager Default occurs, Owner may elect to do any or all of the following: (i) specifically enforce performance or observance by Project Manager of the applicable provisions of this Agreement; (ii) recover from Project Manager Actual Damages (as defined below), plus interest thereon at the Late Charge Rate; (iii) terminate this Agreement in accordance with paragraph (b) next below; and (iv) enforce or perform the Project Manager's obligations which gave rise to such Project Manager Default. Owner's election of a remedy hereunder with respect to a Project Manager Default shall not limit or otherwise affect Owner's right to elect any of the other remedies available to Owner hereunder.

(b) Notice of Termination. If a Project Manager Default occurs, Owner shall have the right to give Project Manager a written notice stating that this Agreement shall terminate on the date specified in such notice and this Agreement and all rights of Project Manager under this Agreement shall expire and terminate as of the date specified in such notice, except as follows: (i) Project Manager shall be entitled to full reimbursement of all Project Costs, within thirty (30) days after the date of expiration or termination of this Agreement; and (ii) Project Manager shall receive payment of any Sales Management Fees, upon the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty (20) days after the date of expiration or termination, such third party purchaser as a Person to whom Project Manager marketed a portion of Project Site).

(c) Actual Damages. "Actual Damages" means an amount equal to the sum of (i) any and all amounts paid by a City Party to cure or otherwise in connection with any Project Manager Default; and (ii) any all costs, fees and expenses by a City Party to pursue rights and remedies of Owner, as a result of or in connection with a Project Manager Default. Actual Damages shall exclude any expenses that would qualify as Project Costs if incurred by Project Manager. The City Parties waive the right to seek recovery of any special, indirect, consequential or punitive damages arising from a Project Manager Default.

(d) No Waiver. No failure by Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of a Project Manager Default, and no payment or acceptance of full or partial payments of amount due under this Agreement during the continuance (or with Owner's knowledge of the occurrence) of any Project Manager Default, shall constitute a waiver of any such Project Manager Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No waiver of any Project Manager Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Project Manager Default. Payment by Project Manager to Owner of any amounts

due under this Agreement shall be without prejudice to, and shall not constitute a waiver of, any rights of Project Manager against Owner provided for under this Agreement or at law or in equity. Project Manager's compliance with any request or demand made by Owner shall not be deemed a waiver of Project Manager's right to contest the validity of such request or demand.

### Section 7.3 Cessation of Employment.

If Dan Van Epp is at any time no longer employed with Project Manager, then Project Manager shall immediately deliver written notice to the City Parties regarding the cessation of such employment and the nomination of a successor as Project Manager's Representative. The City Parties shall have the right to approve or disapprove such nomination, exercising their reasonable discretion. If a nomination is disapproved, Project Manager shall nominate one or more alternative successors until such time as the City Parties have approved the new Project Manager's Representative.

### Section 7.4 Default by City Party.

Each of the following events shall be a "City Party Default" hereunder:

(a) if a City Party fails to observe or perform in any material respect any other term, covenant or condition of this Agreement on a City Party's part to be observed or performed and a City Party shall fail to remedy such a failure within five (5) days after notice is given by Project Manager of any monetary default and within thirty (30) days after notice is given by Project Manager of any non-monetary default (any such notice of a failure given by Project Manager under this Agreement being referred to herein as a "City Party Default Notice") with respect to such a failure or, if such a failure is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), a City Party does not (i) within thirty (30) days after the giving of such a City Party Default Notice, take steps (and time to time, as reasonably requested by Project Manager, a City Party shall advise Project Manager of the steps being taken) necessary to remedy such failure (which such steps shall be reasonably designed to effectuate the cure of such failure in a professional manner), and (ii) diligently to prosecute to completion the remedy of such failure within one hundred and fifty (150) days after the giving of such City Party Default Notice; or

(b) if a City Party makes or suffers a Transfer which is not expressly permitted under this Agreement; or

(c) if a City Party admits, in writing, that it is generally unable to pay its debts as such become due; or

(d) if a City Party makes an assignment for the benefit of creditors; or

(e) if a City Party files a voluntary petition under Title 11 of the United States Code, or if a City Party files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator

or other similar official of a City Party of all or any substantial part of its properties and the foregoing are not stayed or dismissed within thirty (30) days after such filing or other action; or

(f) if, within sixty (60) days after the commencement of a proceeding against a City Party seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of a City Party or any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of a City Party of all or any substantial its properties such appointment has not been vacated or stayed on appeal or otherwise, or if, within sixty (60) days after the expiration of any such stay, such appointment has not been vacated.

#### Section 7.5 Project Manager's Remedies.

(a) Election. If a City Party Default occurs, Project Manager may elect to do any or all of the following: (i) specifically enforce performance or observance by the City Party of the applicable provisions of this Agreement; (ii) recover from Owner the amount of Project Manager's Actual Damages (as defined below), plus interest thereon at the Late Charge Rate or (iii) terminate this Agreement in accordance with paragraph (b) next below. Project Manager's election of a remedy hereunder with respect to a City Party Default shall not limit or otherwise affect Project Manager's right to elect any of the other remedies available to Project Manager hereunder.

(b) Notice of Termination. If a City Party Default occurs, Project Manager shall have the right to give Owner notice stating that this Agreement shall terminate on the date specified in such notice and this Agreement and all rights of Owner under this Agreement shall expire and terminate as of the date specified in such notice, except as follows: (i) Project Manager shall be entitled to full reimbursement of all Project Costs, within thirty (30) days after the date of expiration or termination of this Agreement; (ii) Project Manager shall receive payment of any Sales Management Fees, upon the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty (20) days after the date of expiration or termination, such third party purchaser as a Person to whom Project Manager marketed a portion of Project Site); and (iii) Project Manager shall be entitled to consummate the acquisition of the Reserved Blocks in accordance with this Agreement.

(c) Project Manager's Actual Damages. "Project Manager's Actual Damages" means an amount equal to the sum of (i) any and all amounts paid by Project Manager to cure or otherwise in connection with any City Party Default; and (ii) any all costs, fees and expenses by Project Manager, whether through direct personnel cost or through engaging third-party attorneys consultants, to pursue rights and remedies of Project Manager, as a result of or in connection with a City Party Default.

(d) No Waiver. No failure by Project Manager to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy

available to such party by reason of a City Party Default, and no payment or acceptance of full or partial payments of amount due under this Agreement during the continuance (or with Project Manager's knowledge of the occurrence) of any City Party Default, shall constitute a waiver of any such City Party Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No waiver of any City Party Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent City Party Default. Payment by a City Party to Project Manager of any amounts due under this Agreement shall be without prejudice to, and shall not constitute a waiver of, any rights of such City Party against Project Manager provided for under this Agreement or at law or in equity. A City Party's compliance with any request or demand made by Project Manager shall not be deemed a waiver of such City Party's right to contest the validity of such request or demand.

#### Section 7.6 Exculpation.

(a) Indemnification. The City Indemnified Parties shall not be liable to Project Manager for, and Project Manager shall indemnify, defend and hold the City Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements, including costs of appeal), penalty or fine affecting any portion of the Project Site (except any portion thereof dedicated to Public Uses) and incurred in connection with or arising from any act, omission or negligence of Project Manager or its Affiliates or of the agents, servants, employees, guests, or licensees of Project Manager or its Affiliates, except to the extent any loss is due to the gross negligence or willful misconduct of any City Indemnified Party.

(b) Insurance Coverage. The obligations of Project Manager under this Article shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to workers' compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project; provided, however, that if a City Indemnified Party actually receives any proceeds of Project Manager's insurance with respect to an obligation of Project Manager under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Project Manager with respect to such obligation.

(c) Defense. If any claim, action or proceeding is made or brought against any City Indemnified Party which is or may be subject to indemnification by Project Manager hereunder, then, upon demand by such City Indemnified Party, Project Manager shall either resist, defend or satisfy such claim, action or proceeding in such City Party's name, by the attorneys for, or approved by, Project Manager's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as such City Indemnified Party shall reasonably approve. The foregoing notwithstanding, such City Indemnified Party may, at its own expense, engage its own attorneys to defend such City Indemnified Party, or to assist such City Indemnified Party in such City Indemnified Party's defense of such claim, action or proceeding, as the case may be. Each City Indemnified Party shall promptly notify Project Manager of the imposition of, incurrence by or assertion against such City Indemnified Party of any cost or expense as to which Project Manager has agreed to indemnify such City Indemnified Party pursuant to the provisions

of this Article. Project Manager agrees to pay such City Indemnified Party all amounts due under this Article within sixty (60) days receipt of the notice such City Indemnified Party.

(d) Right of Setoff. If Project Manager incurs any financial obligation owed to any City Party or City Indemnified Party under this Agreement, whether involving an obligation to pay Actual Damages or to provide indemnification and defense or otherwise, such obligation shall be subject to Project Manager's right of setoff in the amount of any payment, fee or reimbursement owed by any City Party to Project Manager hereunder. Similarly, if any City Party incurs any financial obligation as a result of a Project Manager Default under this Agreement, such City Party shall have the right of setoff as to any payment that may be owed by such City Party to Project Manager hereunder.

(e) Exculpatory Clause and Waiver. The City Parties acknowledge that System is not a party to this Agreement and is merely a limited partner of an Affiliate of Project Manager. Notwithstanding any other term or provision of this Agreement, System shall have no liability hereunder and no personal or direct liability shall at any time be asserted or enforceable against System, its board, any member thereof, or any employee or agent of System on account of or arising out of any obligations arising out of or related to this Agreement. The City Parties agree that they shall look solely to the assets of Project Manager for the enforcement of any claims arising hereunder or related hereto, and waive any claim against System, irrespective of the compliance or noncompliance now or in the future with any requirements relating to the limitation of liability of members under any operating agreement in which System is a signatory. The City Parties acknowledge that Project Manager is obligated to obtain this waiver from each party with whom Project Manager does business when the contract price exceeds \$100,000, and that this and each such contractual relationship would not be created except with the inclusion of this provision.

(f) Non-Discrimination in Employment. During the Term of this Agreement, no Party nor any Party's Affiliates, employees or agents shall unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Each Party and its Affiliates, employees and agents shall assure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Each Party and its Affiliates, employees and agents shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The foregoing non-discrimination compliance provisions shall be included in all written contracts and subcontracts to perform work or provide services under or pursuant to this Agreement. During the Term of this Agreement, each Party and its Affiliates, employees and agents shall conduct their respective activities in accordance with Title VI of the Civil Rights Act of 1964 and the rules and regulations promulgated thereunder.

(g) Survival. The provisions of this Section 7.6 shall survive the termination of this Agreement.



**Section 7.7    Rights and Obligations on Expiration or Other Termination of Agreement.**

Upon the expiration or other termination of this Agreement, the Parties agree that the following shall govern the winding-up and termination of the Agreement:

(a)    Upon termination of this Agreement for any reason whatsoever, Project Manager shall cooperate and work with Owner to ensure an orderly transition of the management of the Project to Owner and/or to Owner's designated transition representative. Project Manager shall remain obligated to deliver to Owner all Project Documentation and Project Manager shall obtain the consent of all Architects involved with the Project Documentation to the use of the Project Documentation by the City Parties. All personal property (including equipment and supplies) acquired pursuant to this Agreement, subject to Owner's reimbursement of costs incurred by Project Manager in acquiring such personal property, shall be Owner's personal property and shall be delivered to Owner after any termination of this Agreement to such location designated by Owner. With limiting any right of reimbursement or payment hereunder, Project Manager shall assign to Owner all of its rights and obligations in purchase orders, contracts and other commitments which Owner requests that it assign.

(b)    In the event (i) this Agreement is terminated for any reason, (ii) there are Building Developments for which Project Manager has acquired Blocks on which such approved Building Projects are planned, (iii) there are Infrastructure Improvements required to be completed in connection with such Approved Building Developments and (iv) the City is required pursuant to the terms and conditions of this Agreement to fund such Infrastructure Improvements, then City shall continue to be required to fund all costs of the Infrastructure Improvements required to be funded by the City in connection with such Approved Building Projects.

**ARTICLE VIII**

**TRANSFER; INSURANCE; CERTIFICATES BY OWNER AND DEVELOPER**

**Section 8.1    Transfer and Assignment.**

(a)    Transfer by Project Manager. Project Manager shall not suffer or permit a Transfer unless the Transfer is approved in writing by Owner which approval may be granted or withheld on Owner's sole and unfettered discretion. In connection with any request for Owner's approval to a Transfer, Project Manager agrees to provide all information requested by Owner including any details on any payments or consideration whatsoever to be received by Project Manager or its Affiliate. Notwithstanding any of the foregoing language to the contrary, Project Manager shall not be required to obtain Owner's approval of any Transfer (i) to any Affiliate of Project Manager, including, without limitation, any Affiliate or subsidiary of Newland National Partners IV, a Delaware limited liability company, or (ii) which involves an indirect change in control (i.e., a change in ownership control solely of the majority owner or the parent company or entity of Project Manager or its permitted assignee hereunder).

(b)    Transfer by City Party. A City Party shall not suffer or permit a Transfer unless the Transfer is approved in writing by Project Manager which approval may be granted or

withheld in Project Manager's sole and unfettered discretion, provided, however, that each City Party may transfer its interest in this Agreement to any party which is controlled by the City without Project Manager's approval. In connection with any request for Project Manager's approval to a Transfer, the City Parties agree to provide all information requested by Project Manager including any details on any payments or consideration whatsoever to be received by the City Parties.

#### Section 8.2 Project Manager's Insurance.

During the Term of this Agreement, Project Manager shall maintain in full force and effect the following insurance: (i) worker's compensation insurance which complies with the minimum statutory limits of the State of Nevada; (ii) comprehensive general liability insurance written on an occurrence policy form, with limits of liability of not less than \$1,000,000 per occurrence, \$1,000,000 personal and advertising injury, and \$2,000,000 general aggregate limit; and (iii) commercial automobile liability insurance, with limits of liability of not less than \$1,000,000 per accident. Upon request, Project Manager shall deliver to the City Parties written evidence of the insurance required to be maintained by Project Manager hereunder.

#### Section 8.3 Estoppel Certificates.

(a) Project Manager's Certificate. Project Manager shall, within fifteen (15) days after request by a City Party for reasonable purpose, execute, acknowledge and deliver to such City Party, or any other Person specified by such City Party, a written statement (which may be relied upon by such Person) (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether Project Manager has given such City Party written notice of any City Party Default, or any event that, with the giving of notice or the passage of time, or both, would constitute a City Party Default, by a City Party in the performance of any covenant, agreement, obligation or condition contained in this Agreement, which City Party Default or event has not been cured, and (ii) whether, to the actual knowledge of Project Manager (but without independent inquiry), any City Party is in default in performance of any covenant, agreement, obligation or condition contained in this Agreement, and if so, specifying in detail each such City Party Default and concerning such other matters as reasonably requested by such City Party.

(b) City Party's Certificate. A City Party shall, within fifteen (15) days after request by Project Manager for reasonable purposes, execute, acknowledge and deliver to Project Manager, or such other Person specified by Project Manager, a written statement (which may be relied upon by such Person) (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether a Project Manager Default has occurred or whether any City Party has given Project Manager notice of any event that, with the giving of notice or the passage of time, or both, would constitute a Project Manager Default, which Project Manager Default or event has not been cured, and (ii) whether, to the actual knowledge of a City Party (but without independent inquiry), Project

Manager is in default in the performance of any covenant, agreement, obligation or condition contained in this Agreement, and, if so, specifying, in detail, each such Project Manager Default and concerning such other matters as reasonably requested by Project Manager.

## **ARTICLE IX**

### **CITY PARTIES' RIGHT TO PERFORM DEVELOPER'S COVENANTS AND OBLIGATIONS**

#### **Section 9.1    Right to Perform Project Manager's Obligations.**

If a Project Manager Default shall occur and be continuing beyond any applicable notice and cure period, any City Party may at its own expense, but shall be under no obligation to, perform the obligation of Project Manager the breach of which gave rise to such Project Manager Default, without waiving or releasing Project Manager from any of its obligations contained herein, provided that any City Party shall exercise such right only in the event of a bona fide emergency or after five (5) business days' notice to Project Manager, and Project Manager hereby grants any City Party access to the Project Site in order to perform any such obligation.

#### **Section 9.2    Waiver, Release and Assumption of Obligations.**

A City Party's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to constitute, a City Party's assumption of Project Manager's obligations to pay or perform any of Project Manager's past, present or future obligations hereunder.

## **ARTICLE X**

### **NOTICES, CONSENTS AND APPROVALS; INVESTIGATIONS**

#### **Section 10.1    Service of Notices and Other Communications.**

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, any of the Parties by the other, or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project Site or the Project, each such notice, demand, request, consent, approval or other communication (referred to in this Section as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered United States Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt, (iii) a recognized national courier service, or (iv) facsimile transmission, with confirmation of receipt, addressed as follows:

If to Project Manager:

Newland Communities, LLC  
3000 E. Camelback Road, Suite 100  
Phoenix, AZ 85016  
Attn: Dan Van Epp  
Facsimile: (602) 468-1633

with a copy to:

Newland Communities, LLC  
9820 Towne Centre Drive, Suite 100  
San Diego, California 92121  
Attn: Martha K. Guy, Esq.  
Facsimile: (858) 455-6142

If to a City Party:

City Manager  
City of Las Vegas  
400 Stewart Avenue  
Las Vegas, NV 89101  
Facsimile: (702) 388-1807

Any Notice may be given, in the manner provided in this Section, on either party's behalf by its attorneys designated by such party by Notice hereunder.

Every Notice shall be effective on the date actually received, as indicated on the applicable receipt or on the date delivery thereof is refused by the recipient thereof.

#### Section 10.2 Consents and Approvals.

(a) Writing. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing, except for verbal consents and approvals made between the Project Representatives during periodic meetings in accordance with Section 3.6(c) above. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act.

(b) Standard. Unless another standard of approval is indicated in connection with a specific approval or approval, all consents and approvals which may be given by a Party under this Agreement shall not be unreasonably withheld or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the

disapproving Party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) Failure to Respond. If a Party entitled to grant or deny its consent or approval (the “Consenting Party”) within the specified time period shall fail to do so, then, except as otherwise provided in below, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

**“FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE PROJECT MANAGEMENT AND CONSULTING AGREEMENT BETWEEN NEWLAND COMMUNITIES, LLC, AND [FILL IN NAME OF APPLICABLE CITY PARTY] SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH PROJECT MANAGEMENT AND CONSULTING AGREEMENT.”**

If a matter to be consented to or approved requires the consideration of the City Council or the board of directors of a City Party, then, provided the City Party gives Project Manager notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless the City Party shall fail to respond to Project Manager’s request by the date which is fifteen (15) days after the first regular meeting of the City Council or board of directors, as the case may be, which occurs no earlier than sixty (60) days following such request.

### Section 10.3 Investigations and Inquiries.

Project Manager shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction or the submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry relating in any way to this Agreement or any aspect of the Project. In addition, Project Manager shall promptly report in writing to the City’s office of the City Attorney any solicitation, of which Project Manager’s employees, officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of a City Party, or other Person relating to the procurement or obtaining of this Agreement or affecting the performance of this Agreement.

**ARTICLE XI**  
**GENERAL PROVISIONS**

**Section 11.1 Governing Law and Venue.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Clark County, Nevada.

**Section 11.2 References.**

The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

**Section 11.3 Entire Agreement**

(a) Integration. This Agreement, together with the exhibits and attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between the City Parties and Project Manager and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

(b) Modification. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the City Parties and Project Manager. No waiver of any Project Manager Default or City Party Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Project Manager Default or City Party Default.

(c) Recitals and Exhibits. The Recitals set forth above, and all exhibits attached hereto, are hereby incorporated into and made part of this Agreement.

**Section 11.4 Invalidity of Certain Provisions.**

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### Section 11.5 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Agreement, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Agreement.

#### Section 11.6 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the City Parties and Project Manager and, except as otherwise provided herein, their respective successors and permitted assigns.

#### Section 11.7 Nonliability of Officials and Employees.

No member, official or employee of any City Indemnified Party, or any other governing body (including, without limitation, the Mayor of the City or members of the Council) shall be personally liable to Project Manager, or any successor in interest, in the event of any default or breach by a City Party or for any amount or obligation which may become due to Project Manager or its successors under the terms of this Agreement; and any and all such personal liability of every such Person, either at common law or in equity or by constitution or statute, and any and all such rights and claims against every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

#### Section 11.8 Conflict of Interest.

Project Manager represents and warrants that, to the best of its actual knowledge, no member, official or employee of a City Party has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Project Manager represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of a City Party has received any payment or other consideration for the making of this Agreement, directly or indirectly from Project Manager. Project Manager represents and warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Project Manager acknowledges that the City Parties are each relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

#### Section 11.9 No Partnership.

The Parties hereby acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for any purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement or any transaction contemplated hereunder shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this Section shall survive termination of this Agreement.

#### Section 11.10 Time Periods.

Any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

#### Section 11.11 No Third Party Beneficiaries.

Nothing in this Agreement shall confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

#### Section 11.12 Dispute Resolution.

(a) Prohibitory Injunctive Relief. Except for actions seeking only injunctive relief, any dispute arising from lack of approval or consent, controversies or disagreements between or among the Parties or arising from the interpretation or application of any Article or Section, and any disputes in this Agreement which by their specific provisions are made subject to this Section shall be resolved by arbitration as provided herein; provided, however, that any Party may seek prohibitory injunctive relief without first submitting a controversy to arbitration.

(b) Reference to Arbitration. If the Parties (the "Arbitrating Parties") that are required to agree on an arbitrable dispute cannot reach an agreement within thirty (30) days after notice of an arbitrable dispute is given by any Arbitrating Party to the other Party or Parties, then any Arbitrating Party may at any time after the end of said thirty (30) day period refer the dispute to arbitration by notifying any other Arbitrating Party thereof, and the Arbitrating Parties agree to cooperate in obtaining such arbitration.

(c) Appointment of Arbitrators. Each Arbitrating Party shall within twenty (20) days of its receipt of such notification designate one person, as hereinafter provided, to represent it as an arbitrator. The arbitrators so appointed by the Arbitrating Parties shall together designate one or two additional persons as arbitrators to the end that the total number of arbitrators shall be an odd number. The appointment of all additional arbitrators under this Section shall be in writing and shall be submitted to the Arbitrating Parties within ten (10) days following the selection of the last arbitrator selected by the Arbitrating Parties. Any person designated as an arbitrator shall be knowledgeable and experienced in the matters sought to be arbitrated, and shall in all events (i) not be affiliated with any Owner (or any Affiliate of any Owner) and (ii) have at least fifteen (15) years of relevant experience and expertise with respect to large commercial real estate



projects in the City or the County. If the dispute to be arbitrated deals with construction, the arbitrator(s) so appointed shall be experienced and knowledgeable in the construction industry as it relates to the nature of the structure to which such arbitration applies. Similarly, any arbitrator(s) appointed in an architectural dispute shall be qualified in respect of architecture as it relates to the nature of the structure to which such arbitration applies.

(d) Decision. The arbitrators shall meet or otherwise confer as deemed necessary by the arbitrators to resolve the dispute, and a decision of a majority of the arbitrators will be binding upon the Arbitrating Parties. The decision of the arbitrators shall be in writing and shall be made as promptly as possible after the designation of the last arbitrator, but in no event later than thirty (30) days from the date of such designation. A copy of the decision of the arbitrators shall be signed by at least a majority of the arbitrators and given to each Arbitrating Party in the manner provided in this Agreement for the giving of notice.

(e) Enforcement. The decision of the arbitrators may (i) be entered as a judgment in a court of competent jurisdiction and (ii) shall in no event modify, amend or supplement this Agreement in any manner. All arbitration conducted under this Section is a condition precedent to the commencement by any Party of a judicial proceeding arising out of a dispute which is subject to arbitration hereunder.

#### Section 11.13 Waiver of Jury Trial.

TO THE EXTENT PERMITTED BY LAW, EACH OF DEVELOPER AND THE CITY PARTIES WAIVE KNOWINGLY AND VOLUNTARILY FOR THEMSELVES AND ALL PERSONS CLAIMING BY OR THROUGH THEM, ALL RIGHT TO TRIAL BY JURY IN ANY OTHER JUDICIAL PROCEEDINGS HEREAFTER INSTITUTED BY ANY PARTY HERETO IN RESPECT OF THIS AGREEMENT.

#### Section 11.14 City's Authority.

Nothing in this Agreement or in the Parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of any City Party in the discharge of its police or governmental powers.

#### Section 11.15 Independent Contractor.

It is expressly understood and agreed that Project Manager is an independent contractor under this Agreement. Without limiting or affecting any other agreements now or hereafter executed between the parties, Project Manager shall not and does not by this Agreement in any way or for any purpose become a partner of Owner in the conduct of its business, or otherwise, or a joint venturer with or a member of a joint enterprise with Owner.

#### Section 11.16 Attorneys' Fees.

If any suit, action, arbitration or other proceeding (hereinafter "proceeding(s)") is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, from the losing or defaulting party all reasonable fees, costs and expenses (including the reasonable fees and expenses of attorneys and witnesses) incurred in

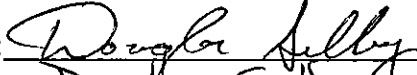
connection with the prosecution or defense of such proceeding, whether or not the proceeding is prosecuted to a final judgment or determination; provided, however, if there is no clear prevailing party, such fees, costs and expenses shall be borne as determined by the court or arbitration panel.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City, Owner and Project Manager have executed this Agreement as of the day and year first above written.

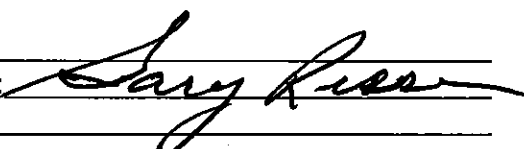
OWNER:

CITY PARKWAY V, INC., a Nevada corporation

By:   
Name: Douglas Selby  
Title: President


CITY:

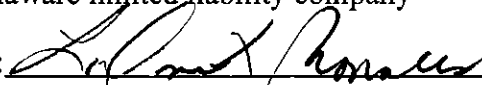
CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada

By:   
Name: Gary Reese  
Title:

Gary Reese, Mayor Pro-Tem

PROJECT MANAGER:

 NEWLAND COMMUNITIES, LLC, a Delaware limited liability company

By:   
Name: LaDONNA K. MONSEES  
Title: VICE CHAIRMAN & PRESIDENT

APPROVED AS TO FORM

 12/12/05  
Thomas R. Green Date  
Deputy City Attorney

Attest: By   
BARBARA JO RONEMUS, City Clerk

## EXHIBIT A

### Legal Description of Project Site

#### LEGAL DESCRIPTION (PER LAWYERS TITLE OF NEVADA TITLE REPORT NO. 01090246JT AMENDMENT IN DATED APRIL 22, 2002)

THE LAND REFERRED TO HEREIN IS SITUATE IN THE STATE OF NEVADA, COUNTY OF CLARK,  
DESCRIBED AS FOLLOWS:

##### PARCEL 1:

THAT PORTION OF LOT 5 OF PARKWAY CENTER, A COMMERCIAL SUBDIVISION, AS SHOWN BY  
MAP THEREOF IN BOOK 53 OF PLATS, PAGE 61 IN THE OFFICE OF THE COUNTY RECORDER  
OF CLARK COUNTY, NEVADA, SAME BEING A PORTION OF THE WEST HALF (W 1/2) OF  
SECTION 34 AND THE EAST HALF OF SECTION 33, TOWNSHIP 20 SOUTH, RANGE 61 EAST,  
M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA AND BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, BEING ON THE NORTH LINE OF  
BONNEVILLE AVENUE (100 FOOT WIDE RIGHT OF WAY), SAME BEING ON THE LINE OF THE  
UNION PACIFIC RAILROAD RIGHT OF WAY (100 FOOT WIDE); THENCE ALONG THE NORTH LINE  
OF SAID BONNEVILLE AVENUE THE FOLLOWING FOUR (4) COURSES AND DISTANCES: NORTH  
62°04'12" WEST, A DISTANCE OF 204.98 FEET TO A POINT OF CURVATURE TO THE LEFT;  
WITH SAID CURVE TO THE LEFT, CONCAVE SOUTHERLY, HAVING A RADIUS OF 550.00 FEET, A  
CENTRAL ANGLE OF 36°45'51" AND ALONG THE ARC 352.91 FEET TO A POINT OF TANGENCY;  
SOUTH 81°09'57" WEST, A DISTANCE OF 485.41 FEET TO A POINT OF CURVATURE TO THE  
RIGHT; WITH SAID CURVE TO THE RIGHT, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF  
55.00 FEET, A CENTRAL ANGLE OF 95°00'00" AND ALONG THE ARC 91.19 FEET TO A POINT  
OF TANGENCY ON THE EAST LINE OF GRAND CENTRAL PARKWAY (100 FEET RIGHT OF WAY);  
THENCE ALONG THE EAST, SOUTHEASTERLY AND SOUTHERLY LINE OF SAID GRAND CENTRAL  
PARKWAY THE FOLLOWING TEN (10) COURSES AND DISTANCES: NORTH 03°50'03" WEST, A  
DISTANCE OF 94.71 FEET TO A POINT OF CURVATURE TO THE RIGHT; WITH SAID CURVE TO  
THE RIGHT, CONCAVE EASTERLY, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF  
31°45'19" AND ALONG THE ARC 249.41 FEET TO A POINT OF TANGENCY; NORTH 27°55'16"  
EAST, A DISTANCE OF 1058.21 FEET TO A POINT OF CURVATURE TO THE RIGHT, CONCAVE  
SOUTHEASTERLY, HAVING A RADIUS OF 450.00 FEET, CENTRAL ANGLE OF 20°42'14" AND  
ALONG THE ARC 162.91 FEET TO A POINT OF TANGENCY; NORTH 48°37'30" EAST, A  
DISTANCE OF 1217.02 FEET TO A POINT OF CURVATURE TO THE RIGHT; WITH SAID CURVE TO  
THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 450.00 FEET, A CENTRAL  
ANGLE OF 25°40'39" AND ALONG THE ARC 201.67 FEET TO A POINT OF TANGENCY; NORTH  
74°18'09" EAST, A DISTANCE OF 331.32 FEET TO A POINT OF CURVATURE TO THE RIGHT;  
WITH SAID CURVE TO THE RIGHT, CONCAVE SOUTHERLY, HAVING A RADIUS OF 350.00 FEET,  
A CENTRAL ANGLE OF 43°37'41" AND ALONG THE ARC 266.51 FEET TO A POINT OF  
NON-TANGENCY FROM WHICH A RADIAL LINE BEARS SOUTH 27°55'50" WEST, SOUTH  
27°55'50" WEST A DISTANCE OF 5.00 FEET TO AN INTERIOR ANGLE POINT; NORTH 62°04'10"  
EAST A DISTANCE OF 68.80 FEET TO A POINT ON SAID WEST LINE OF THE UNION PACIFIC  
RAILROAD; THENCE ALONG SAID WEST LINE SOUTH 27°55'16" WEST A DISTANCE OF 741.16  
FEET TO A POINT OF NON-TANGENT CURVATURE TO THE LEFT FROM WHICH A RADIAL LINE  
BEARS SOUTH 31°53'35" EAST; THENCE LEAVING SAID WEST LINE AND CROSSING A PORTION  
OF SAID LOT 5, FROM A TANGENT BEARING SOUTH 58°06'25" WEST WITH SAID CURVE TO  
THE LEFT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1510.00 FEET, A CENTRAL  
ANGLE OF 30°11'04" AND ALONG THE ARC 795.50 FEET TO A POINT OF TANGENCY; THENCE  
SOUTH 27°55'21" WEST, A DISTANCE OF 150.00 FEET TO A POINT OF CURVATURE TO THE  
LEFT; THENCE WITH SAID CURVE TO THE LEFT, CONCAVE EASTERLY, HAVING A RADIUS OF  
1510.00 FEET, A CENTRAL ANGLE OF 30°11'15" AND ALONG THE ARC 795.57 FEET TO A  
POINT OF NON-TANGENCY FROM WHICH A RADIAL LINE BEARS NORTH 87°44'06" EAST, SAME  
POINT BEING ON SAID WEST LINE OF THE UNION PACIFIC RAILROAD; THENCE WITH SAID WEST  
LINE, SOUTH 27°55'16" WEST, A DISTANCE OF 365.64 FEET TO THE POINT OF BEGINNING.

##### PARCEL II:

LOT 5 OF PARKWAY CENTER, A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF IN  
BOOK 53 OF PLATS, PAGE 61, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK  
COUNTY, NEVADA.

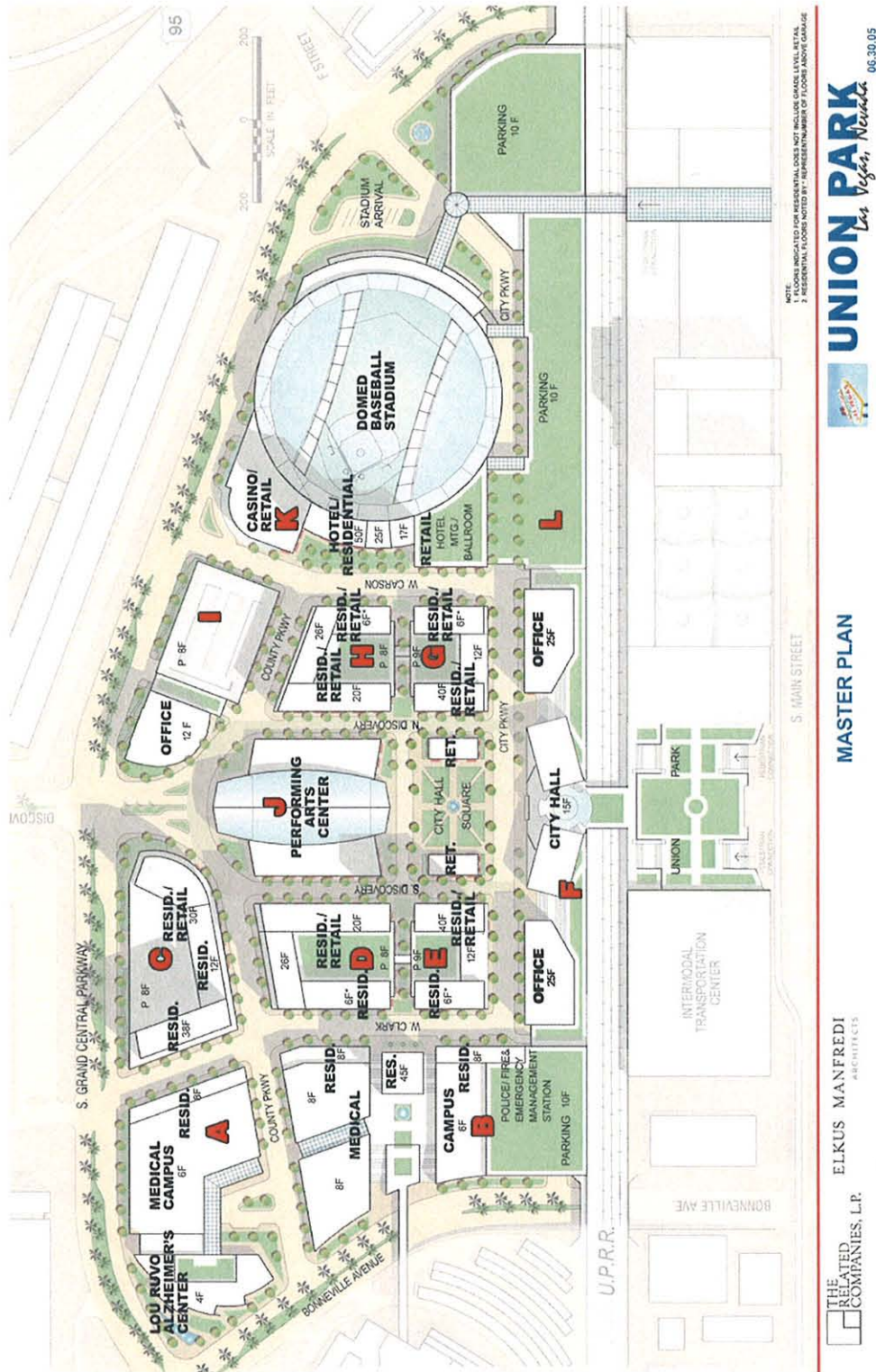
EXCEPTING THEREFROM THAT PORTION PREVIOUSLY CONVEYED TO CITY PARKWAY IV, INC., A  
NEVADA NON-PROFIT CORPORATION BY DEED RECORDED MAY 18, 2001 IN BOOK 20010518  
AS DOCUMENT NO. 02199, OFFICIAL RECORDS.

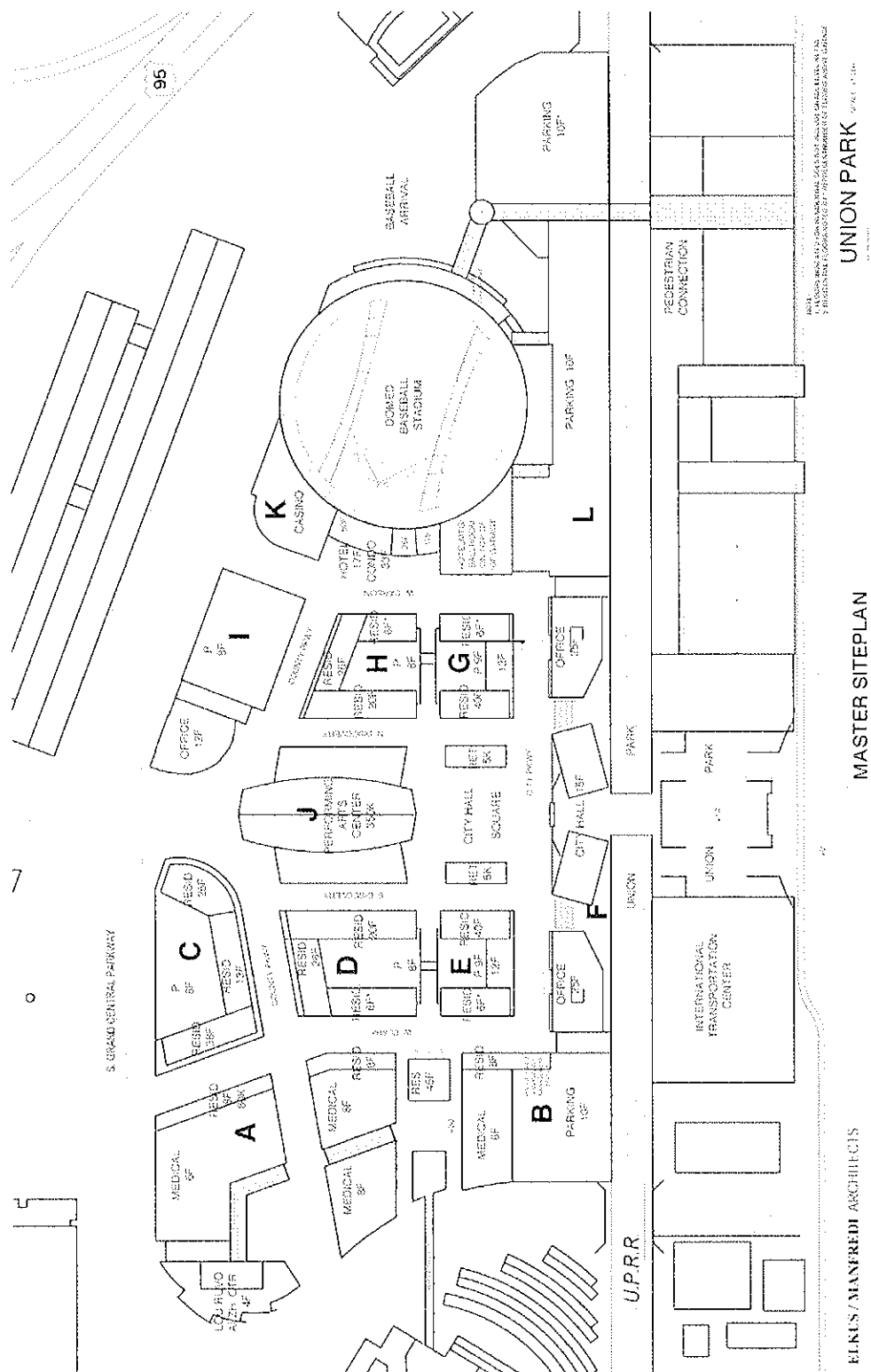
## **EXHIBIT B**

### **Infrastructure Bidding Requirements and Infrastructure Improvement Design and Construction Contractor Required Contract Provisions**

The foregoing Agreement will result in the City providing financial incentives to Project Manager in excess of \$100,000. In accordance with NRS.279.500, Project Manager acknowledges that the Project may be subject to the provisions of NRS 338.010 through 338.090, inclusive, to the same extent as if the City had awarded the contract for the Project. To the extent prevailing wage requirements are applicable in the City's determination, the prevailing wage rates effective at the time the public work is contracted shall be paid for each craft or type of workman needed to construct the public work and Project Manager or City (as applicable) shall specify the effective prevailing wage rates in the bid specifications for all improvements to be constructed.

## Master Plan





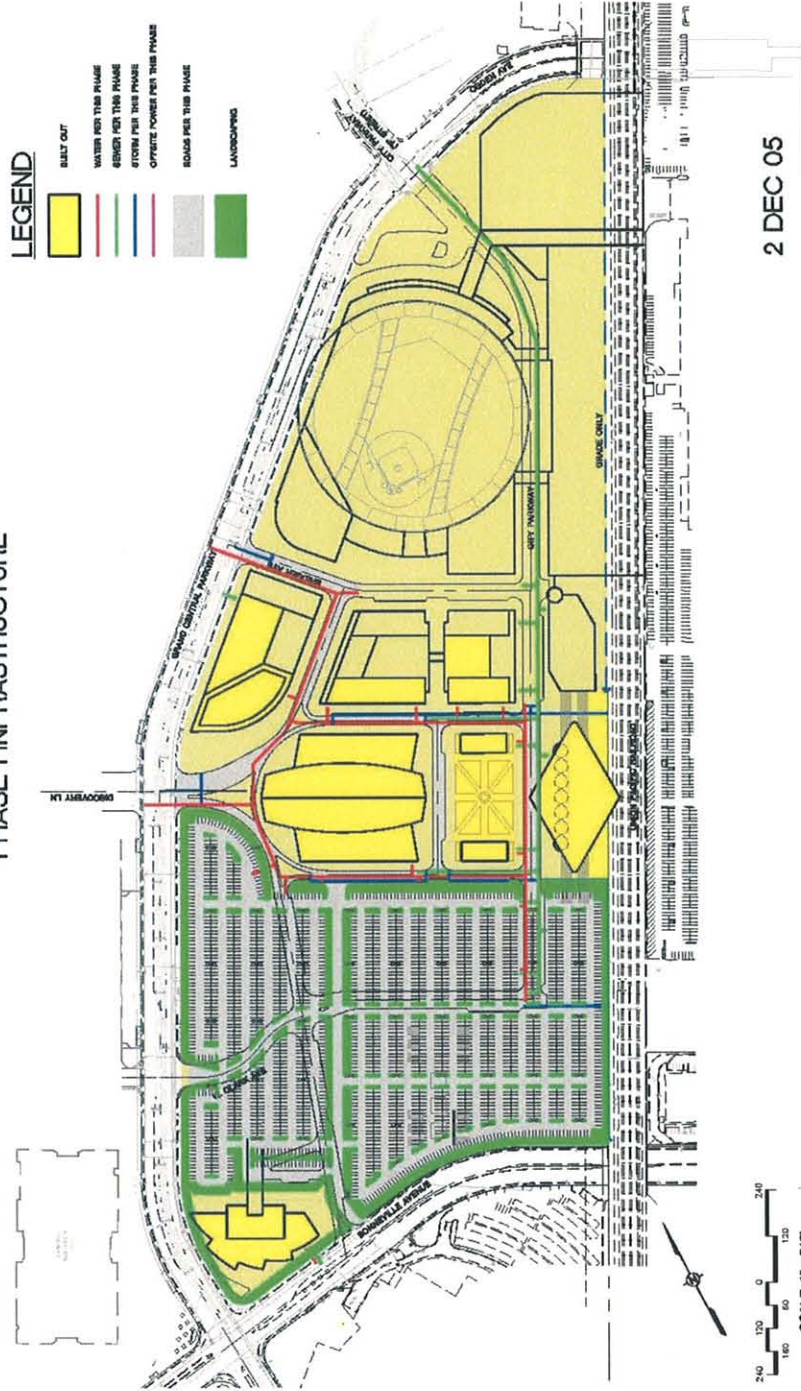
ELKUS/MANFREDI ARCHITECTS

MASTER SITEPLAN

UNION PARK



# UNION PARK CONCEPTUAL SITE PLAN PHASE I INFRASTRUCTURE



2 DEC 05



Date: December 05, 2005 - 1:26pm / User: anthony.dillon  
Path: K:\CV\0072533 Related\000 Union Park CAD\05\enb\att\enb\img\dwg / Xref: 6333000-brrr,6333000-els,6333000-bndy,6333000-v-bi



### Designation of Reserved Blocks



**EXHIBIT F**

**Option Memorandum**

Memorandum as

S, LLC, a  
company

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ESTED BY AND  
RETURN TO:**

, LLC  
ive, Suite 100  
92121  
Esq.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

**MEMORANDUM OF OPTION AGREEMENT**

ANDUM is executed by and between Newland Communities, LLC, a  
ility company ("Optionee"), and City Parkway V, Inc., a Nevada  
y of Las Vegas, Nevada (collectively, "Optionor").

tionee hereby give notice that they have entered into that certain Project  
alting Agreement, whereby Optionor has granted to Optionee an option  
isal (the "Option Rights") with respect to the acquisition of "Reserved  
at certain real property located in Clark County, Nevada, as more  
1 Attachment 1 hereto (the "Property").

um is intended only to provide record notice of the Option Rights. Any  
Memorandum and the Option Rights as described in the Project  
alting Agreement shall be controlled by the terms and conditions of the  
d Consulting Agreement.

about this Memorandum, contact either or both of the following:

ewland Communities, LLC  
000 E. Camelback Road, Suite 100  
hoenix, AZ 85016  
.ttn: Dan Van Epp  
acsimile: (602) 468-1633

ity Manager  
ity of Las Vegas  
00 Stewart Avenue  
as Vegas, NV 89101  
acsimile: (702) 388-1807

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(S E A L)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(S E A L)

Attachment 1

Legal Description of Property